(22,429.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 808.

METROPOLIS THEATRE COMPANY ET AL., PLAINTIFFS IN ERROR,

vs.

THE CITY OF CHICAGO AND ERNEST J. MAGERSTADT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 14, 1911.

1 At a Supreme Court begun and held at Springfield, on Tuesday, the fifth day of April, in the year of our Lord one thousand nine hundred and ten, within and for the State of Illinois.

Present: William M. Farmer, Chief Justice; James H. Cartwright, Justice; Alonzo K. Vickers, Justice; Frank K. Dunn, Justice; John P. Hand, Justice; Orrin N. Carter, Justice; George A. Cooke, Justice; William H. Stead, Attorney General; Warren C. Murray, Marshal.
Attest:

J. McCAN DAVIS, *Clerk.*

Be it remembered, to-wit on the Eleventh day of March, 1910, the same being one of the days in vacation before the term of Court aforesaid, a record of the proceedings in the Circuit Court of Cook County was filed by Appellants, City of Chicago and E. J. Magerstadt, City Collector, in the office of the Clerk of the Supreme Court in words and figures following to-wit:

2 7058. Ag. 24.

Record to Supreme Court.

Gen. No. 295,836.

METROPOLIS THEATER CO. et al.
vs.
CITY OF CHICAGO et al.

Filed Mar. 11, 1910. J. McCan Davis, Clerk Supreme Court.

3 TRANSCRIPT OF PROCEEDINGS.

UNITED STATES OF AMERICA,
State of Illinois, Cook County, ss.

Pleas before the Honorable Jesse A. Baldwin, one of the Judges of the Circuit Court of Cook County, Illinois, at a term thereof begun and held at Chicago, in the Court-house, in said County and State, on the third Monday (being the 21st day) of February, in the year of our Lord one thousand nine hundred and ten and of the Independence of the United States the one hundred and thirty-fourth.

Present:

Honorable Jesse A. Baldwin one of the Judges of the Circuit Court of Cook County State of Illinois.
John E. W. Wayman, State's Attorney.
Christopher Strassheim, Sheriff.
Attest:

JOSEPH E. BIDWELL, JR., *Clerk.*

Be it remembered that heretofore towit on the 31st day of January, A. D. 1910, a certain Bill of Complaint was filed in the office of the Clerk of said Court, in words and figures following to-wit:

4 STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court of Cook County.

To the Honorable Judges of said Court, in Chancery Sitting:

Your Orators Metropolis Theater Company, A. W. Dingwall, individually and Ruth Carpenter Litt, Sol Litt and A. W. Dingwall, as Executors under the last will and testament of Jacob Litt, deceased, Amusement Company of Illinois, Harry J. Powers, Dillingham & Connor, Cort Theater Company, Grand Opera House Company, Great Northern Company, La Salle Theater Company, Princess Theater Company Chicago Opera House Company, Olympic Amusement Company, Garrick Theater Company and Bertram C. Whitney, bring this their bill of complaint, as complainants, for and on behalf of themselves and all other persons, firms and corporations in the City of Chicago, similarly situated who may by leave of court become co-complainants with your orators upon entering into such undertaking as may be fixed by the court to share and pro rate in the expenses of prosecuting this suit, against the City of Chicago and Ernest J. Magerstadt, City Collector of said City of Chicago, as defendants hereto; and your orators respectfully represent unto your Honors and charge the following:

1. That your orator, The Metropolis Theater Company is a corporation duly organized and existing under and by virtue of the laws of the State Illinois, with its principal place of business in the City of Chicago; that it now is and for more than two (2) years continuously last past has been the owner, proprietor, operator or manager of a theater or place of amusement located in said City of Chicago under the name and style of the Colonial Theatre;
5 that the seating capacity of said Colonial Theatre now is and for such period of time has been Fourteen hundred and eighty two (1482) seats; and that said Colonial Theatre cannot house or accommodate or grant admission to any number of persons in excess of the number 1482, by reason of the ordinances of the City of Chicago in such cases made and provided.

That your orators, A. W. Dingwall, individually and Ruth Carpenter Litt, Sol Litt and A. W. Dingwall, as executors under the last will and testament of Jacob Litt, deceased, are now and for more than two (2) years continuously last past have been the owners, proprietors, operators or managers of a theater or place of amusement located in said City of Chicago under the name and style of McVicker's Theater; that the seating capacity of said McVicker's Theater now is and for such period of time has been 1868 seats; and that said McVicker's theater cannot house or accommodate or grant admission to any number of persons in excess of the num-

ber of 1868, by reason of the ordinances of the City of Chicago in such cases made and provided.

That your orator, Amusement Company of Illinois, is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business in the City of Chicago; that it now is and for more than two (2) years continuously last past has been the owner, proprietor, operator or manager of a theater or place of amusement located in said City of Chicago under the name and style of Illinois Theater; that the seating capacity of said Illinois Theater now is and for such period of time has been 1249 seats; and that said Illinois Theater cannot house or accommodate or grant admission to any number of persons in excess of the number 1249, by reason of the ordinances of the City of Chicago in such cases made and provided;

6 That your orator, Harry J. Powers, now is and for more than two (2) years continuously last past has been the owner, proprietor, operator or manager of a theater or place of amusement located in said City of Chicago under the name and style of Powers' Theater; that the seating capacity of said Powers' Theater now is and for such period of time has been 1115 seats; and that said Powers' Theater cannot house or accommodate or grant admission to any number of persons in excess of the number 1115 by reason of the ordinances of the City of Chicago, in such cases made and provided.

That your orator Dillingham & Connor, is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois with its principal place of business in the City of Chicago; that it now is and for more than two (2) years continuously last past has been the owner, proprietor, operator or manager of a theater or place of amusement located in said City of Chicago under the name and style of Studebaker Theater; that the seating capacity of said Studebaker Theater now is and for such period of time has been 1350 seats; and that said Studebaker Theater cannot house or accommodate or grant admission to any number of persons in excess of the number of 1350 by reason of the ordinances of the City of Chicago in such cases made and provided.

That your orator, Cort Theater Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business in the City of Chicago; that it now is and for more than three (3) months continuously last past has been the owner, proprietor, operator or manager of a theater or place of amusement located in the said City of Chicago, under the name and style of Cort theater; that

7 the seating capacity of said Cort Theater now is and for such period of time has been 962 seats; and that said Cort Theater cannot house or accommodate or grant admission to any number of persons in excess of the number of 962 by reason of the ordinances of the City of Chicago in such cases made and provided:

That your orator Grand Opera House Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business in the City of

Chicago; that it now is and for more than two (2) years continuously last past has been the owner, proprietor, operator or manager of a theater or place of amusement located in said City of Chicago, under the name and style of Grand Opera House; that the seating capacity of said Grand Opera House now is and for such period of time has been 1379 seats; and that said Grand Opera House cannot house or accommodate or grant admission to any number of persons in excess of the number of 1379 by reason of the ordinances of the City of Chicago in such cases made and provided.

That your orator, Great Northern Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Michigan with its principal place of business in the City of Chicago; that it now is and for more than two (2) years continuously last past has been the owner, proprietor, operator or manager of the theater or place of amusement located in said City of Chicago under the name and style of Great Northern Theater; that the seating capacity of said Great Northern Theater now is and for such
8 period of time has been 1205 seats; and that said Great Northern Theater cannot house or accommodate or grant admission to any number of persons in excess of the number of 1205, by reason of the ordinances of the City of Chicago in such cases made and provided.

That your orator, La Salle Theater Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business in the City of Chicago; that it now is and for more than two (2) years continuously last past has been the owner, proprietor, operator or manager of a theater or place of amusement located in said City of Chicago, under the name and style of La Salle Theater; that the seating capacity of said La Salle Theater now is and for such period of time has been 770 seats; and that said La Salle Theater cannot house or accom-odate or grant admission to any number of persons in excess of the number of 770 by reason of the ordinances of the City of Chicago in such cases made and provided.

That your orator, Princess Theater Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business in the City of Chicago; that it now is and for more than two (2) years continuously last past has been the owner, proprietor, operator or manager of the theater or place of amusement located in said City of Chicago under the name and style of Princess Theater; that the seating capacity of said Princess Theater now is and for such period of time has been 950 seats; and that said Princess Theater cannot house or accommodate or grant admission to any number of persons in excess of the number of 950 by reason of the ordinances of the City of Chicago in such cases made and provided.

9 That your orator, Chicago Opera House Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business in the City of Chicago; that it now is and for more than two (2) years continuously last past has been the owner, proprietor,

operator or manager of a theater or place of amusement located in said City of Chicago, under the name and style of the Chicago Opera House; that the seating capacity of said Chicago Opera House now is and for such period of time has been 1434 seats; and that said Chicago Opera House cannot house or accommodate or grant admission to any number of persons in excess of 1434 by reason of the ordinances of the City of Chicago in such cases made and provided.

That your orator, Olympic Amusement Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business in the City of Chicago; that it now is and for more than two (2) years continuously last past has been the owner, proprietor, operator or manager of the theater or place of amusement located in said City of Chicago under the name and style of Olympic theater; that the seating capacity of said Olympic Theater now is and for such period of time has been 1532 seats; and that said Olympic Theater cannot house or accommodate or grant admission to any number of persons in excess of the number of 1532 by reason of the ordinances of the City of Chicago in such cases made and provided.

That your orator, Garrick Theater Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business in the City of
10 Chicago; that it now is and for more than two (2) years continuously last past has been the owner, proprietor, operator or manager of a theater or place of amusement located in said City of Chicago under the name and style of Garrick theater; that the seating capacity of said Garrick theater now is and for such period of time has been 1259 seats; and that said Garrick Theater cannot house or accommodate or grant admission to any number of persons in excess of the number of 1259 by reason of the ordinances of the City of Chicago in such case made and provided.

That your orator, Bertram C. Whitney, is now and for more than two (2) years continuously last past has been the owner, proprietor, operator or manager of a theater or place of amusement located in said City of Chicago under the name and style of Whitney Opera House; that the seating capacity of said Whitney Opera House now is, and for such period of time has been 708 seats; and that said Whitney Opera House cannot house or accommodate or grant admission to any number of persons in excess of the number of 708 by reason of the ordinances of the City of Chicago in such cases made and provided.

2. That in each of your orator's said theaters above mentioned, excepting in said Cort Theater, there have been given and produced, for more than two (2) years last past, and in said Cort Theater for more than three (3) months last past, and are now being given and produced under the several direction and management of that one of your orators who is the owner, proprietor, operator or manager of said theaters respectively, entertainments and performances of a theatrical, dramatic, operatic, vaudeville, variety or spectac-
11 ular character; that such performances and productions, as aforesaid, have been and are now being presented and given

by your orators respectively for gain, which such gain has been and now is derived by your orators respectively by the sale of tickets to such performances and productions, at prices indicated on said tickets, which said tickets, as aforesaid, entitle the holder of said tickets to admission to such places of amusement, to-wit: your orators' said theaters wherein are given entertainments and productions, as aforesaid; and that such tickets of admission vary in price, according to the season of the year and according to the location of seats in said theaters and in some of your orators' said theaters, as aforesaid, according to the character and cost of the theatrical entertainment or production so given; that in some of the theaters so respectively owned, operated, or managed by your orators as aforesaid, the price of admission has not been and is not now in excess of One dollar ($1.00) in others of the theaters so respectively owned operated or managed by your orators, as aforesaid, the price of admission has not been and is not now in excess of Two dollars ($2.00) in some of the theaters respectively owned, operated or managed by your orators, as aforesaid, the minimum price of admission has been and now is fifty cents (50¢) and in some of the theaters respectively owned, operated or managed by your orators, as aforesaid, the minimum price of admission has been and now is twenty-five — (25¢) and that all of your orators, with the exception of one or two, have at different times during the last two (2) years made and in the future intend to make, charge and exact different maximum and minimum prices of admission, dependent upon the location of seats and according to the cost of the production, and according to the season of the year during which such productions and entertainments are given at said respective theaters, as aforesaid, and also dependent upon the condition of your orators' said businesses respectively.

12

3. That by reason of the nature and character of your orators' said business, as aforesaid, it is impossible to determine in advance what the highest or lowest price of admission to such theaters will be in the future, such prices of admission being as hereinbefore stated, determined by conditions over which your orators have no control; that it is impossible for any of your orators to now state or determine what the condition of said businesses will be or what character or productions or entertainment will be produced at their said respective theaters during any one license period referred to in the alleged ordinance, or amendment thereto, hereinafter referred to, or what the highest or lowest prices of admission to be charged by any of your orators will be for tickets to such productions and entertainments; that at the present time the highest price of admission to some parts of each of said theaters so owned, operated or managed by your orators as aforesaid, charged to the public to enter each of said theaters, is one dollar or over; and that the lowest price charged to some parts of each of said theaters is much less than one dollar; that there is not now and never has been any fixed rule or standard among theaters in said City of Chicago as to the number of seats in any theater for which an admission fee or charge of one dollar or over is made; that in some of the theaters located

in the City of Chicago some of which theaters are owned and operated by your orators, and some of which are owned and operated by others than your orators there are many more seats sold for more than one dollar, for a performance, than in other theaters so operated by your orators and others. That the gross revenue, per performance,
13 of each of your orators' said theaters and other theaters located in the City of Chicago if all of the seats in said theaters respectively were occupied at any one time for any production or entertainment would differ and vary according to the seating capacity of said theaters respectively, and also according to the conditions there prevailing, included among which conditions is the charge made by such theaters for tickets of admission, and the several and different prices of admission to different parts of each of said theaters; there being no theaters in the City of Chicago wherein the prices of admission to all parts of the theater are identical with the prices of admission charged for the same number of seats in any other theater.

4. That the seating capacity of the largest theater owned, operated or managed by any one of your orators is 1868, and that the seating capacity of the smallest theater owned, operated or managed by any one of your orators is 708; that the gross revenue from any production in the smallest of said theaters, as aforesaid (when said theate is fully occupied) for a single evening performance, is less than one thousand dollars ($1000) figured on the basis of the now existing charge made by such theater for [illegible] of admission to all parts of said theater. That the gross revenue from any production in the largest theater owned, operated or managed, as aforesaid (when said theater is fully occupied) by any one of your orators, for a single evening performance, is approximately the sum of Fifteen Hundred Dollars ($1500) figured on the basis of the now existing charge made by such theater for prices of admission to all parts of said theater.

14 That the largest theater or place of amusement in the City of Chicago in which entertainments of a theatrical dramatic, operatic, vaudeville, variety or spectacular character are produced and given is the theater commonly known and described as the Auditorium Theater; that said Auditorium Theater now has and for many years continuously last past has had a seating capacity in excess of Four Thousand (4000) that in said Auditorium Theater the highest price of admission now being charged is One Dollar ($1) or more; that the gross revenue from any one single production in said Auditorium Theater which said production is of a like or similar character to the productions now and heretofore produced at the theaters and places of amusement of your orators, computed at the usual and customary charge or price of admission to said Auditorium Theater, is far in excess of the sum of to wit Four Thousand Dollars ($4000) and that during many weeks of each licensed period so designated and created by the ordinances of said City, the gross revenue of said Auditorium Theater as aforesaid is in excess of, to-wit: Five thousand dollars ($5000) for each evening performance. That in a number of theaters and places of amusement in

said City of Chicago in which the highest price of admission is less than One dollar (1.) and in which are produced and given entertainments of a theatrical, dramatic, operatic and vaudeville, variety or spectacular character, such entertainments are produced and given at least twice each day, including Sunday, thereby largely increasing the revenue of such theaters or places of amusement, and that the seating capacity and gross and net revenue of some of said theaters wherein the highest price of admission (other than box seats hereinafter referred to) is less than one dollar. ($1) is more than twice that of some of the theaters so owned, operated or managed by your orators as aforesaid.

15 That in many others of said theaters and places of amusement in said City wherein the highest price of admission (other than box seats) is more than one dollar ($1) and giving like entertainments, including the theaters and places of amusement so owned and operated by some of your orators, as aforesaid, there are produced and given only eight (8) entertainments or theatrical productions per week.

5. That each of said theaters and places of amusement so owned, operated or managed by your orators respectively, as aforesaid, has been in all respects approved as a building in which at theater or place of amusement may be conducted by the duly authorized and constituted public authorities of the City of Chicago, and that upon such buildings and the property upon which said buildings are located, and upon the personal property located in and about said theaters, the owners thereof pay taxes upon the same terms and conditions as do the owners of other and like property in said City of Chicago, and that said City of Chicago under the statute in such cases made and provided, receives its proportionate part and share of such taxes, and derives great and substantial benefits therefrom.

6. That there has been expended in and about the theaters so respectively owned, operated or managed by each of your orators, as aforesaid, a sum in excess of towit: Ten Thousand dollars ($10,000) for the purpose of therein producing and giving entertainments of a theatrical, dramatic, operatic, vaudeville, variety or spectacular character, and that each of your said orators has expended a large sum of money to-wit: in excess of five thousand dollars ($5000) in advertising his or its said theater as a place where entertainments are given; that each of your orators' said business, and the good

16 will and business of each of said theaters, are of great value to that one of your orators so owning and operating such theater, as aforesaid; that in the event that any of said theaters are not permitted to continue as a place of amusement wherein such entertainments are given and produced, a large part of the investment of your orators respectively, as aforesaid, will be destroyed and rendered utterly valueless and each of your orators will suffer great and irreparable damage and injury and in an amount which cannot be adequately compensated or ascertained in an action at law; and that if your orators respectively are permitted and allowed to carry on their said respective businesses, as aforesaid, in a proper manner, and with due regard to your orators' lawful rights, your

orators will be able to continue to use the property so now owned by them respectively and to earn a fair return upon the moneys so invested by them respectively.

7. That the business carried on by your orators in their theaters respectively, as aforesaid, is a lawful business, and does not in any way controvert or conflict with any law of the State of Illinois, or any valid ordinance of the City of Chicago; and that prior to the opening or operating of any of your orators' said theaters as places of amusement, and prior to the giving or producing of any entertainment therein, as aforesaid, your orators' said respective theaters were duly approved by the proper and constituted authorities of said City of Chicago as places where amusement of such character might be given and continued to be given, and as places which conformed in every particular with the ordinances of said City of Chicago.

17 8. That on towit, December 17, 1909, at a meeting of the City Council of the City of Chicago, said City Council undertook to pass an alleged ordinance, entitled:

"An ordinance Amending Section 99 of the Revised Municipal Code of Chicago, of 1905, as Amended, Sections 100 to 111 of the Revised Municipal Code of Chicago, of 1905, and section 112 of the Revised Municipal Code of Chicago of 1905, as amended and Repealing Certain Sections of said Code and 'Certain Ordinances.'"

That a true, accurate and correct copy of said alleged ordinances is to be found of page- 2147 to 2154 of the Journal of the Proceedings of the City Council of the City of Chicago, Illinois, of December 17, 1909, hereto attached and by express reference thereto made part hereof as exhibit "A."

That upon the passage of said ordinance said City of Chicago and the duly constituted officers thereof whose duty it is to enforce such ordinances, asserted and claimed that said ordinance was a valid and subsisting ordinance and became in full force and effect upon January 1, 1910, and that each of your orators was obligated to comply therewith and to take out licenses in accordance with the terms thereof, and to each pay a license fee of One Thousand dollars ($1000) for the privilege of conducting their said respective theaters or places of amusement and producing and giving therein entertainments of a theatrical, dramatic, operatic, vaudeville, variety or spectacular character; and said City of Chicago and Ernest J. Magerstadt, City Collector thereof, whose duty it was and is to collect such license fees, threatened by force, if necessary, to close each of your orators' said theaters, and not permit the same to be operated or entertainments to be given therein unless each of your orators complied with said alleged ordinance, and particularly with that provision of said alleged ordinance therein referred to

18 as section 101. Thereupon, on, to-wit: January 7, 1910, in the Superior Court of Cook county, all of your orators, together with the Globe Theater Co. and Monroe Theater Co. as complainants did file their bill of complaint against said defendants herein to enjoin said defendants, and each of them from endeavoring to enforce the terms and provisions of said alleged ordinance of December 17, 1909, as will more fully appear by the allegations of

said bill of complaint, a true and correct copy of which said bill of complaint is by express reference thereto made a part hereof, and herewith brought into court.

9. That as will appear from said bill of complaint your orators did attack said alleged ordinance of December 17, 1909, among other grounds, for the reason that said ordinance was and is discriminatory, and was and is a palpable attempt to tax under the guise of regulation the theaters and places of amusement so owned, operated and managed by your orators, as aforesaid.

10. That thereafter and on towit, January 10, 1910, at a meeting of the City Council of the City of Chicago said City Council undertook to pass an alleged amendatory ordinance entitled "An ordinance amending certain sections of an ordinance passed by the City Council of the City of Chicago on December 17, 1909, relating to *amendments.*" That a true, accurate and correct copy of said alleged amending ordinance is to be found on pages 2562 to 2565 of the Journal of the Proceedings of the City Council of the City of Chicago, Illinois, of January 10, 1910, hereto attached and by express reference thereto made a part hereof as exhibit "B."

19 11. That said alleged ordinance of December 17, 1909, together with said alleged amendatory ordinance of January 10, 1910, are in parallel colums hereto attached and by express reference thereto made a part hereof, as exhibit "C."

12. That at the present time, and for many years continuously last past, there are in said City of Chicago a large number of theaters or places of amusement in which are being given, and have heretofore been given entertainments of a theatrical, dramatic, operatic, vaudeville, variety or spectacular character, and which said theaters and places of amusement, as aforesaid, are not now and have not been owned, managed or operated by your orators, or any or either of them; that among said theaters and places of amusement last aforesaid are the

Haymarket Theater, which has a seating capacity of to-wit: 1650.

Star and Garter Theater, which has a seating capacity of to-wit: 1936.

Majestic Theater, which has a seating capacity of to-wit: 1890.

Globe Theater, which has a seating capacity of to-wit: 1594.

That said last aforementioned theaters are similarly located to some of your orators' said theaters, and charge for prices of admission (exclusive of box seats) Seventy five cents and under, and as hereinafter more fully stated, said Globe and Majestic theaters charge One Dollar (1.) and more for box seats, and give the same class and character of entertainments, and frequently have the identical shows and productions as those given and produced at one or more of your orators' said theaters.

20 12. That under the terms and provisions of said alleged ordinance of December 17, 1909, the Globe and Majestic Theaters respectively owned, operated and managed by the Globe Theater Co. and Monroe Theater Co. were obligated to procure a license and pay therefor the sum of one thousand ($1000) Dollars; that under said alleged amendatory ordinance of January 7, 1910,

they and each of them are obligated to pay only the sum of Four Hundred ($400) Dollars for such license; that each of said last named theaters *are* giving entertainments of the First class and of exactly the same kind and character as those produced and given prior to the exactment of the said alleged amendatory ordinance; that each now charges the same price of admission and has the same seating capacity; that exactly the same amount of inspection and regulation is now imposed upon them as upon each of your orators' said theaters, and as imposed upon said Globe and Majestic Theaters prior to January 7, 1910.

12*b*. That said Globe and Majestic Theaters cater to and receive the same patronage as your orators in their respective theaters; that the revenue at said theaters (Globe and Majestic) and the revenue obtained by the productions, entertainments and shows there given, are greatly in excess of the revenue obtained by some of your orators at their respective theaters upon the production of identical shows and entertainments.

12*c*. That the income and revenue obtained by theaters and places of amusement from the giving of an entertainment consisting of the 2nd, 3rd or 4th classes described in said alleged ordinance, as amended, is very often largely in excess of the income and revenue obtained from the giving of an entertainment of the 1st class.

21 That there now are being given and for a long time continuously last past there have been given in said City of Chicago entertainments of theatrical, dramatic, operatic, vaudeville, variety or spectacular character in rooms and buildings to view which entertainments, as aforesaid, no admission fee is now being or has been charged, and that large assemblages of persons congregate daily to view such entertainments.

13. That in each of your orators' said theaters or places of amusement, aforesaid, it is intended to produce, offer or present entertainments of the First-class (so de-signated in said amendatory ordinance) and the highest price of admission charged in each of your orators' said theaters at the present time and on January 1, 1910, and upon the date of the passage of said alleged amendatory ordinance "exclusive of that charged for box seats" is One Dollar ($1) or more. That your orators, and each and every of the same, have refused heretofore and still do refuse to pay to said City of Chicago the license fee of One Thousand Dollars ($1000) exacted by said amendatory ordinance, and more particularly by section 104 thereof, for the reasons hereinafter stated, or to accept a license from said City of Chicago containing the prohibitory provisions and clauses provided by section 110 of said amendatory ordinance, particularly among which is a provision that your orators' price of admission shall be re-tricted and governed by the amount designated in the license referred to in said section as constituting the highest price of admission to your orators' said theaters or places of amusement; that your orators' said theaters or places of amusement are not impressed with a public use, and neither the State of Illinois, nor said

City of Chicago, or the City Council thereof, has any right
22 to designate the amount to be charged by your orators, or any or either of them, for admission to be charged to the public for such theaters or places of amusement, as aforesaid.

14. That in each of your orators' said theaters, as aforesaid, there are now being produced entertainments of a theatrical, dramatic, operatic, vaudeville, variety or spectacular character. That said City of Chicago, and its agent Ernest J. Magerstadt, the City Collector thereof, now threaten to institute many and divers causes of action against your orators, and each of them, for the license fees in said alleged ordinance, as amended, provided to be paid by your orators respectively; and your orators allege that unless enjoined by order of this Honorable Court said City of Chicago will undertake to enforce said alleged ordinance, as amended, against your orators, respectively, and endeavor by means of the Police force of the said City of Chicago, to close each of your orators' said theaters, and will by the institution of divers suits and arrests of your orators, or the managers or agents of said theaters, endeavor to inflict divers fines and penalties against your orators for each and every day upon which your orators refuse to comply with said alleged ordinance, as aforesaid. That under the terms of said alleged ordinance of December 17, 1909, as aforesaid, it became operative and in full force and effect on towit January 1, 1910. That said alleged amendatory ordinance became effective ten (10) days after its publication; that said ten (10) days have now elasped and no attempt has been made by said City Council to amend, stay or repeal said alleged ordinances, as aforesaid.

23 That there are in said City of Chicago many theaters and places of amusement, other than those owned, operated or managed by your orators, for whom the same penalties, fines and impositions may be exacted under the terms and provisions of said alleged ordinances and alleged amendatory ordinance, as aforesaid.

15. That in said City of Chicago from towit: the year 1881, up to, to-wit: the year 1887, theaters or places of amusement in which entertainments of a theatrical, dramatic, operatic, vaudeville, variety or spectacular character, or, in other words, theaters or places of amusement in which entertainments of a similar kind or character to those now produced or given by your orators were produced or given, paid an annual license fee to said City of Chicago of One hundred ($100) Dollars.

That from towit: the year 1887, to, to-wit: the year 1897 in said City of Chicago, theaters or places of amusement in which entertainments of a theatrical, dramatic, operatic, vaudeville, variety or spectacular character, or in other words, theaters or places of amusement in which entertainments of a similar kind or character to those now produced or given by your orators were produced or given, paid an annual license fee to said City of Chicago of two hundred dollars ($200).

That in said City of Chicago from to-wit the year 1897 up to, to-wit: the year 1902, theaters or places of amusement in which entertainments of a theatrical, dramatic, operatic, vaudeville, variety or spec-

tacular character, or in other words, theaters or places of amusement in which entertainments of a similar kind or character to those now produced or given, paid an annual license fee to said City of Chicago of three hundred dollars ($300.00).

24 That in said City of Chicago from, to-wit: the year 1902 up to, to-wit; January 1, 1910, theaters or places of amusement in which entertainments of a theatrical, dramatic operatic, vaudeville, variety or spectacular character, or in other words, theaters or places of amusement in which entertainments of a similar kind or character to those now produced or given by your orators were produced or given, paid an annual license fee to said City of Chicago of Five hundred dollars ($500).

16. That each of your orators up to January 1, 1910, did pay to said City of Chicago the license fee so exacted by said City of Chicago in the several periods during which your orators respectively operated their said respective theaters and places of amusement.

That the cost to said City of Chicago by reason of any inspection, supervision or regulation of your orators' said theaters, or places of amusement, or of the entertainments of a theatrical, dramatic, operatic, vaudeville, variety or spectacular character, herein produced or given, is not now more than it has been for many years continuously prior to January 1, 1910; that said cost of inspections, supervision or regulation of your orators' said theaters or places of amusement does not now cost said City of Chicago, and has not heretofore for many years continuously last past cost said City of Chicago for each of said theaters or places of amusement so owned, operated or managed by your orators respectively, as aforesaid, as your orators are informed and believe and after careful investigation charge the fact to be, to exceed the sum of Fifty Dollars ($50) per year.

25 That in the theaters or places of amusement so owned operated or managed by your orators respectively in said City of Chicago, there are produced from time to time entertainments of the kind designated as "First-class" in said alleged ordinance of December 17, 1909, as amended; that said entertainments are produced by companies of actors known and designated as a rule as "traveling shows", that said traveling companies or shows are not owned, controlled, or managed by your orators respectively, or by the owners, operators or managers of said theaters respectively, but are owned, operated and managed with very few exceptions by persons, firms or corporations located in the City of New York, or other large cities than Chicago in the United States; that your orators pay to said traveling shows or companies certain compensation for exhibiting and producing their said respective productions and entertainments, as aforesaid, in the respective theaters or places of amusement so owned by your orators respectively, and that the only interest your orators have in said traveling shows or companies is that said traveling shows and companies should produce and make a good production and entertainment, and the only interests the owners, managers or producers of said traveling shows have in your orators respectively is that your orators should pay to them

certain compensation for such productions respectively; that in some instances said traveling shows or companies, as aforesaid, give but one production for one afternoon or evening at one of your orators' said theaters, and in some instances they give eight (8) performances a week for a number of weeks in some of your orators' said theaters respectively, as aforesaid, dependent largely upon the bookings of said traveling shows or companies; that said bookings are not subject to the control of your orators, but are made through
26 booking agencies generally located in the City of New York in which your orators have no interest, and over which your orators have control, and that said traveling shows or companies, or the entertainments produced at your orators' said theaters respectively, as aforesaid, do not dictate or dominate and have no voice in the fixing of the prices of admission to your orators' said theaters; that many of said traveling shows and companies play at one of your orators' said theaters during a playing season in which the highest price of admission, other than for box seats is One dollar and fifty cents ($1.50) or Two dollars ($2.) and during the same playing season, towit: in the same year and during the same license period, play at some other theater in said City of Chicago at which the highest price of admission, other than for box seats, is less than One Dollar ($1).

17. That there are theaters and places of amusement in said City of Chicago similarly situated to those of your orators and including some of your orators' said theaters and places of amusement, that are open fifty two (52) weeks in the year and therein produce and give entertainments of said First-class and there are other theaters and places of amusement in said City of Chicago similarly situated to those of your orators, and including some of the theaters so owned, operated and managed by your orators, which do not operate during fifty-two weeks of the year, but operate for a much less period of time and that there is no fixed rule or standard in said City of Chicago, nor has there ever been as to the number
27 of weeks during any year or license period that any theater or place of amusement should remain open and produce entertainments, as aforesaid; that in each and every theater in said City of Chicago, including the theaters, as aforesaid, so owned, operated and managed by your orators, there are what is commonly known and referred to as "Box seats" that said box seats are identical to other seats in the theater except that they are usually grouped off by ribbon, cord, rail or small partition, in groups of four six eight or twelve seats, and that by reason of such fact they are usually sold by tickets of admission at a higher or increased price of admission over other seats in said theaters respectively; that the number of such box seats vary in all of said theaters or places of amusement, and that in some theaters owned, operated or managed by your orators there are many of such box seats compared with the number of box seats in other of the theaters owned, operated and managed by your orators respectively:

That in some of the theaters and places of amusement in said City of Chicago where entertainments of the First-class are given,

such box seats sell for less than One dollar ($1) and in many of said theaters at much more than one dollar ($1.) that in said Auditorium theater there are two hundred and twenty eight (228) box seats; that during the production of certain entertainments in said Auditorium Theater the price for said Two hundred and twenty-eight (228) box seats is equal to or greater than the entire price of admission for all the seats in the smallest (to-wit the Whitney) theater so owned by one of your orators, and nearly equal to the price of admission of all the seats in a number of said theaters so respectively owned by your orators; that in said Majestic theater in which the highest price of admission except for box seats
28 is less than One dollar ($1.00) there are located two hundred and fifty two (252) box seats, the price of admission to which is One dollar (1) or more; that in a number of theaters in said City of Chicago in which the highest price of admission, excepting the box seats, is above one dollar ($1.00) and in which the highest price of admission except box seats is less than One dollar ($1.00) the said capacities of said theaters respectively could be easily transformed so that in said theaters there would be nothing but box seats. That exactly the same number of players are employed, and the same scenery and paraphernalia are used to give entertainments of Class One in theaters and places of amusement in said City of Chicago, irrespective of whether the places of amusement or theaters in which such entertainments are given charge for the highest price of admission (other than for box seats) One dollar ($1.) or less than One dollar ($1.)

18. That the cost of inspection, supervision or regulation of theaters and places of amusement in said City of Chicago, wherein are given entertainments of the first class, is in no wise dependent or conditioned upon the highest price of admission charged to any entertainment offered or presented at any such theater or place of amusement and that the price or highest price charged for admission to any entertainment offered or presented at such theater or place of amusement bears no relation to the regulation, inspection, or supervision of such theaters or places of amusement, or to the entertainment therein produced, and that the highest price charged for admission to any entertainment offered or presented at such theater or place of amusement does not indicate that the revenue or income of such theater or place of amusement is greater than or as large, and as a matter of fact it often is not as large as that of a theater or place of amusement wherein the highest price of admission charged is a much less sum.

29 That there are a number of theaters or places of amusement in said City of Chicago wherein are produced and given entertainments of the first class, where the highest price of admission charged is less than One dollar, whose income and revenue during the license period fixed in said alleged ordinance is far greater than that of theaters or places of amusement (including such theaters or places of amusement owned, operated or managed by one or more of your orators) wherein the highest price of admission charged is more than One dollar ($1.00).

That the cost to said City of Chicago of inspection, supervision and regulation in such theaters where the highest price of admission charged is less than One Dollar ($1.00) exclusive of box seats) is equal to and in some instances greater than the cost of inspection, supervision and regulation of theaters or places of amusement in which the highest price of admission charged, exclusive of box seats is One Dollar ($1) and over. That the cost of inspection, supervision and regulation by said City of Chicago of theaters and places of amusement since January 1, 1910, is no greater than it was prior to January 1, 1910, and under said alleged ordinance and amendment thereto, there is no provision for any other or further inspection, supervision or regulation for theaters or places of amusement now in force in said City of Chicago prior to said January 1, 1910, and that no ordinances of said City of Chicago have been enacted or passed which became effective on January 1, 1910, or at any time immediately prior to or since said date, increasing to said City of Chicago in any way the cost of inspection, regulation or supervision of theaters or places of amusement.

30 19. That your orators, and each and every of them, do now pay, and have for a long time, to-wit: several years, prior to January 1, 1910, paid to said City of Chicago, or to the persons designated by said City of Chicago, separate and distinct fees in the shape of license or inspection fees, and certain other moneys for the inspection, supervision, and regulation of their respective theaters and places of amusement among which are the following to wit:

That in and by the Building Ordinance of the City of Chicago, and more particularly in and by section 521 thereof, it is provided that the main proscenium opening shall have a substantial steel curtain, vertically operated and fireproofed on the stage side, and that

"Plans for such curtain shall be approved by the Building Department, and a permit obtained for its erection. The Building Department shall inspect such curtain semi-annually, for which inspection a fee of Two dollars shall be charged."

That each of your orators has complied with said ordinance.

That in and by the general ordinances of said City of Chicago, and more particularly in and by section 2217 thereof, it is provided that all steam boilers, or any tank or tanks subject to pressure other than city pressure, shall be duly inspected from time to time and certificates of inspection therefor issued by the duly constituted and authorized agents and employés of said City of Chicago. That each and every of your orators has such inspection at least once a year of the boilers necessarily used by them respectively in the operation of said theaters or places of amusement and that pursuant to said ordinance, and more particularly section 2222 thereof, each of your orators pays to said City of Chicago from three dollars to five dollars upon each of said boilers, for each of said inspections.

31 That in and by sections 318, 352 and 383 of the General Ordinances of said City of Chicago it is provided that the control of all lights and electrical appliances used in any theater or place of amusement in said City of Chicago shall be under the control of the City Electrician of said City of Chicago, and shall be by him or

his duly authorized Deputy inspected, and that in and by section 813 of said General Ordinances it is provided that fees should be paid to the City Collector for such inspection so made as aforesaid by said City Electrician; that each of your orators is obliged to and does, prior to the installation or use of any electrical appliances in said theaters or places of amusement or exhibition having any such electrical appliances, as aforesaid, submit to said City Electrician each and every of said appliances, and have the same duly inspected by the said City Electrician, and that each of your orators does now pay and continuously for a long period of time has paid to said City Collector for such inspection a large sum of money, in the aggregate of, to-wit: Forty dollars ($40) per year, dependent largely upon the number of entertainments given in said theaters or places of amusement in such year.

That in and by the General Ordinances of said City of Chicago and more particularly in and by an Ordinance passed on towit, July 6, 1909, it is provided that in each theater or place of amusement in said City of Chicago having a seating capacity of three hundred or more and of class V as hereinafter more particularly referred to and which said theater or place of amusement is used for theatrical or vaudeville performances, and where admission fee is charged, such theater or place of amusement shall "pro-
32 cure and keep at his, their, or its own expense, one adult male person as a special stage fireman, who shall wear such uniform and badge as the Fire Marshal of the City of Chicago shall prescribe, which person shall be responsible to and under the direction and control of the Fire Marshal of the City of Chicago or his accredited representative, during such time as any such theater may be opened to the public."

And it is therein further provided that it shall be the duty of every person, firm or corporation operating or maintaining such theater or place of amusement, in addition to such stage fireman hereinabove referred to, to

"keep at his, their, or its own expense, one adult male person as a fire guard, in addition to the special stage fireman hereinbefore provided for"

as will more fully appear from an ordinance amending section 311 of chapter 13 of the Revised Municipal Code of Chicago of 1905 as amended June 8, 1908; a true and correct copy whereof is herewith brought into court, and to which said ordinance your orators beg leave to refer.

That each of your orators complies with the provisions of said last aforesaid ordinance, and that the cost of maintaining said fireman and fireguard, as aforesaid, in each of your orators' said theaters, respectively, which cost is borne exclusively by your orators, respectively, is not less than towit: Twelve Hundred dollars ($1200) per year.

That in and by said Building Ordinance hereinbefore referred to, and more particularly section 566, it is provided that:

"Every theater shall be provided with an approved system of

automatic or manual fire alarm telegraph apparatus, con-
33 nected by the necessary wires with the headquarters of the City Fire Alarm Telegraph, and such other place or places as the Fire Marshal shall direct; the number and location of the boxes, and the character of the system, whether automatic or manual, or both, shall be determined by the Fire Marshal."

That in each of your orators' said theaters or places of amusement, as aforesaid, or immediately adjacent thereto, the City of Chicago has installed such fire alarm apparatus, at the cost of your orators, respectively, each fire alarm apparatus, as aforesaid, being paid for by your orators, respectively, in sums ranging from one Hundred dollars ($100) to Two hundred dollars ($200) each.

20. That in and by the General Ordinances of said City of Chicago, buildings are classified, and in and by said ordinance, and more particularly section 244 of article III, is is provided:

"In class IV shall be included every building used as an assembly hall, whether such hall is used for the purposes of worship, instruction or entertainment, unless such building is used for any of the purposes for which buildings of Class V or class VIII are used."

That in and by section 245 of said article III, it is provided:

"In Class V shall be included every building which is used as a public theater, where an admission fee is charged and in which movable scenery is used; provided, however, that public halls and club halls with a seating capacity of less than six hundred (600) although occasionally used for theatrical representations,
34 shall not be construed to be public theaters within the meaning of the term as used in this section, notwithstanding the fact that movable scenery is used upon the stage thereof on such occasions, and such public halls and club halls shall not be considered as buildings of Class V as herein defined. Said public halls and club halls shall be included in Class IV as defined in section 244 of this chapter."

That each of your orators' said theaters or places of amusement, as aforesaid, are in said ordinance aforesaid classed as buildings of Class V, and that buildings of Class V have separate and distinct provisions regarding their inspection, construction and regulation, as will more fully appear by sections 324 to 356 of Article VIII of the General Ordinances of the City of Chicago, to which said Ordinances express reference is made, and which said Ordinances are by special reference thereto made a part hereof and herewith brought into court.

21. That your orators are advised by their solicitors, and upon such advice charge that said ordinance, as amended, and each and every of the provisions thereof referring to the payment of license fees to said City of Chicago, and more particularly section 104 thereof, and the several subdivisions of said section 104 thereof, are illegal, unreasonable, discriminatory and void.

That said ordinance, as amended, under the guise or pretense of regulating theaters or places of amusement, undertakes to levy a tax upon the business of conducting or operating theaters or places of amusement, and that in so far as it undertakes to levy such tax

upon theaters or places of amusement, it is without the charter powers of said City of Chicago, and is illegal and void, and,
35 if it is an effort to tax said business of operating a theater or place of amusement, or said theatricals or entertainments, it is in violation of the constitution of the State of Illinois, and more particularly Article IX section I of said Constitution, inasmuch as it does not operate uniformly as to class.

That said ordinance, as amended, and each and every of the provisions thereof, and more particularly section 104, which imposes a license fee of One Thousand dollars ($1000) upon your orators, is illegal and void, in that it discriminates or imposes different rates for licensing theaters or places of amusement based only and solely upon the highest price of admission charged, to such places of amusement, and that such classification has no bearing upon the regulation or imposing of a license fee upon such places of amusement.

That said Ordinance as amended, and each and every provision thereof, and more particularly Section 104, class 1, is illegal and void, as being without the power of the City of Chicago to pass the same, and because said ordinance and each and every section thereof is unreasonable; that said ordinance and each and every section thereof, and more particularly section 104, is illegal and void, because it contravenes the Constitution of the State of Illinois, and more particularly section 22 of article IV of said constitution in that said section 104 grants to certain persons the right to conduct a business, to-wit: a theater or place of amusement under special privileges or immunities towit, for a lower or less fee than is granted to other persons, for no other reason whatsoever than that they give
a certain different class or kind of entertainment, or because
36 the highest price of admission is lower than the highest price of admission charged by some other person engaged in the same occupation or business.

That said ordinance, as amended, and each and every provision thereof, is in violation of the Constitution of the State of Illinois, and more particularly of section 2 of article II, thereof, in that it deprives your orators of property without due process of law. That said ordinance, as amended, and each and every of the provisions thereof is illegal and void, and violative of the Constitution of the United States, and more particularly the Fourteenth amendment thereof.

That said ordinance, as amended, and each and every provision thereof, and more particularly section 110 are illegal and void, for the reason that it undertakes to fix the price of admission to be charged by your orators for admission to their said theaters or places of amusement. That said ordinance, as amended, and each and every of the provisions thereof are uncertain, indefinite and illegal, and without the power of the City of Chicago to enact the same in violation of the Constitution of the State of Illinois, and in violation of the Constitution of the United States:

Forasmuch therefore, as your orators are entirely remediless in the premises according to the strict rules of the common law, and

can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable, and that your orators may have such other and further relief in the premises as the nature of their case shall require, and to your Honors may seem meet.

37 May It Please Your Honors to grant the writ of summons in Chancery, directed to the Sheriff of said Cook County, commanding him that he summon the said defendants, the City of Chicago, and Ernest J. Magerstadt, as Collector thereof, to appear before the said court, on the first day of the next term thereof, to be held in the court house at Chicago, in Cook county, Illinois, then and there true answer to make to this, your orators' said bill of complaint, but not under oath, the answer under oath being hereby specifically waived.

May it Please Your Honors to grant unto your orators the People's writ of Injunction, to be directed to the said City of Chicago, and said Ernest J. Magerstadt, as collector thereof, restraining them and each of them from in any manner attempting to enforce as against your orators and each of them, said alleged ordinance, as amended.

And May it Please Your Honors to grant unto your orators a temporary restraining order, or a temporary Writ of Injunction, under such terms and conditions as to your Honors shall seem meet and proper, as hereinbefore prayed, all until the further order of the court;

And May it please your Honors to grant to your orators such other further relief as to your Honors may seem meet and proper;

And your orators will ever pray.

METROPOLIS THEATER COMPANY,
A. W. DINGWALL, *Individually, and*
RUTH CARPENTER LITT,
SOL LITT AND
A. W. DINGWALL,
As Executors under the Last Will and Testament of Jacob Litt, Deceased.

38 AMUSEMENT COMPANY OF ILLINOIS,
HARRY J. BOWERS,
DILLINGHAM & CONNOR,
CORT THEATER COMPANY,
GRAND OPERA HOUSE COMPANY,
GREAT NORTHERN COMPANY,
LA SALLE THEATER COMPANY,
PRINCESS THEATER COMPANY,
CHICAGO OPERA HOUSE COMPANY, AND
OLYMPIC AMUSEMENT COMPANY.

(Sgd.) By MAYER, MEYER, AUSTRIAN & PLATT, *Their Solicitors.*

(Sgd.) MAYER, MEYER, AUSTRIAN & PLATT, *Sol'rs — of Counsel.*

GARRICK THEATER COMPANY AND
BERTRAM C. WHITNEY,
(Sgd.) By HERMAN FRANK, *Their Solicitor.*

(Sgd.) HERMAN FRANK,
Solicitor and of Counsel for Garrick Theater Co. and B. C. Whitney.

STATE OF ILLINOIS,
County of Cook, ss:

U. J. Hermann, being first duly sworn, upon oath deposes and says that he now is and for some time last past continuously has been Secretary and Treasurer of the Cort Theater Company, one of the complainants herein, and that he makes this affidavit for and on behalf of said complainant, Cort Theater Company, and each and every of the other of said complainants, being first duly thereunto authorized.

Affiant further says that he has read the above and foregoig
39 bill of complaint and knows the contents thereof, and that the contents thereof are true except as to those allegations therein alleged to be stated upon information and belief, and as to those allegations said affiant, U. J. Hermann, believes the same to be true.

And further affiant saith not.

(Sgd.) U. J. HERMANN.

Subscribed and sworn to before me, a Notary Public, this 19th day of January A. D. 1910.

[SEAL.] (Sgd.) DAVID F. ROSENTHAL,
Notary Public.

40 *Ordinance Dec. 17th, 1909.*

An Ordinance Amending Section 99 of the Revised Municipal Code of Chicago of 1905, as Amended, Sections 100 to 111 of the Revised Municipal Code of Chicago of 1905, and Section 112 of the Revised Municipal Code of Chicago of 1905, as Amended, and Repealing Certain Sections of the said Code, and Certain Ordinances.

Be it ordained by the city council of the city of Chicago:

SECTION 1. That Section 99 of the Revised Municipal Code of Chicago of 1905, as amended, sections 100 to 111 of the Revised Municipal Code of Chicago of 1905 and section 112 of the Revised Municipal Code of Chicago of 1905, as amended be and the same are hereby amended so as to read respectively as follows:

SECTION 99 (Classification for License). That all theatricals, shows and amusements offered, operated, presented or exhibited for gain, or for admission to which the public is required to pay a fee, are hereby divided into the following twenty-one classes. Such theatricals, shows and amusements are for the purpose of this ordi-

nance hereinafter referred to by the general term "entertainments" and the theater, opera house, auditorium, hall, park, grounds, gardens, tent or other enclosure within which it is intended to produce, offer or present any such entertainments is for the purpose of this ordinance hereinafter referred to by the general term "place."

41 1st Class. All entertainments of a theatrical, dramatic, operatic, vaudeville, variety or spectacular character.

2nd Class. All lectures, readings or recitations, exhibits of paintings, stereoptican views, living pictures, panoramas, museums, panopticons, exhibits of statuary and of art and electrical and mechanical shows.

3rd Class. All musical entertainments consisting solely of vocal or instrumental music or both vocal and instrumental music and not of the nature of an opera, but being what is commonly known and described as a "concert."

4th Class. All exhibitions consisting solely of moving pictures, known as mutoscope, kineoscope, cinematograph, kaleidoscope penny arcades and places in which amusement is furnished through or by one or more automatic picture devices, or other similar devices.

5th Class. Dances, amateur theatrical entertainments, bazaars and other entertainments of like character carried on or engaged in in any hall, structure or building.

6th Class. All grounds, gardens or other enclosures of the kind commonly known and described as "Summer gardens" where musical entertainments only (whether instrumental or vocal) or both are furnished.

7th Class. All grounds, gardens or other enclosures of the kind commonly known and described as "Amusement Parks" wherein shows of different classes are offered or presented by one or more concessionaires.

8th Class. All grounds, gardens or other enclosures of the kind commonly known and described as "Picnic grounds."

42 9th Class. All roller skating or ice skating rinks.

10th Class. All baseball, football, track and field games or other athletic exhibitions of like character.

11th Class. All wrestling matches.

12th Class. Poultry shows, horse shows, stock shows, flower shows, dog shows, cat shows, automobile shows, business and business appliance shows, industrial and trade shows, billiard, pool or bowling matches, exhibits or contests or balloons or aeronautic devices, or any similar entertainment intended to represent any sport, art or science or the progress and development of the same.

13th Class. All circuses, menageries or combined circuses and menageries, wild west shows, dog and pony shows, money shows and caravans.

14th Class. All side shows, concerts, vaudeville, variety, musical or minstrel entertainments and all entertainments known as "air domes" given under covering of canvas or within any structure or

enclosure intended for temporary use and capable of easy transfer or removal.

15th Class. All swimming and diving shows.

16th Class. All entertainments known as "platform" or "walk around" shows, being shows for which no seats are provided for spectators, and all entertainments known as "villages of different nationalities."

17th Class. All entertainments consisting of games of skill and strength testing devices, including lifting, blowing, striking or pulling machines, and all small swings operated by human power.

18th Class. All entertainments, operated by motive power other than animal power, including devices, apparatus, attractions and amusements for the transportation of persons.

43 19th Class. All entertainments consisting of pony or animal rides or attractions operated by animal power for the transportation of persons.

20th Class. All exhibitions and displays of fireworks.

21st Class. All entertainments, exhibitions, performances, amusements not included in any of the foregoing classes.

Section 100. (License—Penalty.)—No person or corporation, either as owner, lessee, manager, officer or agent, or in any other capacity shall give, conduct, produce, present or offer for gain or profit any of the entertainments mentioned in any of the first eleven of the foregoing classes anywhere within the city, excepting in a duly licensed place, nor shall any such person or corporation give, conduct, produce, present, operate or offer for gain or profit any of the entertainments mentioned in the last ten of the foregoing classes without a license issued for that purpose, which said license shall be issued and procured in the manner hereinafter set forth.

Any person or corporation violating any of the provisions of this section shall be fined not more than two hundred ($200.00) dollars for each offense and each and every day upon which any such person or corporation shall give, conduct, produce, present, offer or operate any such entertainment contrary to or in violation of any of the provisions of this section shall constitute a separate and distinct offense.

41 Section 101. (License for Places of entertainment of the first eleven classes.)—Any person or corporation, the owner or lessee of any place at or in which it is intended to produce, offer, present, or carry on any of the entertainments of the first eleven classes desiring to secure a license for such place shall be granted such license under the following conditions.

The applicant shall make application in writing to the Mayor, setting out his full name and address, if an individual, and if a corporation, the full name and residence of its principal officers; also a description of the place for which a license is desired and a statement of the class of entertainment which it is intended to produce, offer or present at such place; also the highest price to be charged for admission to any entertainment offered or presented at such place, and also the seating capacity of such place.

Whereupon, the Mayor shall make, or cause to be made, an exam-

ination of the place for which such license is desired, and if all of the provisions of this ordinance and all of the ordinances of the City of Chicago relating to the giving of entertainments and of the location, construction and maintenance of the places within which such entertainments are given, are complied with and if the Commissioner of Buildings, the City Electrician and the Fire Marshal shall so certify, the Mayor shall issue, or cause to be issued, a license to such applicant, attested by the City Clerk, which shall entitle the licensee named therein to present, offer, produce, or conduct at the place designated in such license and for the period of time specified in such license, entertainments of any one of the foregoing first eleven classes mentioned in said application, upon payment of the license fee hereinafter specified.

45 Section 102. (Application for License for Entertainments of the Twelfth to Twenty-first classes, inclusive.)—Any person or corporation desiring to produce, present, conduct, operate or offer for gain or profit any of the entertainments mentioned in Classes twelve to twenty-one inclusive, at any place within the city shall make application to the Mayor in writing, setting out the full name and address of the applicant, if an individual, and if a corporation, the full name and residence of its principal officers; also a description of the place where it is proposed to produce, present, conduct, operate or offer such entertainment, a description of the kind and class of entertainment the highest price to be charged for admission thereto and the seating capacity of such place.

Whereupon the Mayor shall make, or cause to be made, an examination of such place and if all the provisions of this ordinance and all of the ordinances of the City of Chicago relating to the giving of entertainments and of the location, construction and maintenance of the places within which such entertainments are given, are complied with, the Mayor shall issue, or cause to be issued a license to such applicant attested by the City Clerk, which shall entitle the licensee to conduct, produce, present, operate or offer the class of entertainments specified in such license at the place designated in such application and for the period of time specified in such license, upon the payment of the license fee hereinafter specified.

46 Section 103. (Mayor may refuse a License when.)—If the place at which it is desired to offer any of the foregoing entertainments be not a fit or proper place, and not constructed, maintained, operated or conducted in accordance with the provisions of the ordinances of the City governing and controlling said places, or if the entertainment desired to be produced or offered be of an immoral or dangerous character, or if the person making application for a license be not of a good moral character, the Mayor may refuse to approve such application and no license shall be issued by the City Clerk, except upon the approval of the Mayor.

Section 104. (License Fees.)—The fee to be charged for each place where, or in which, each of the first eleven classes of entertainments, as defined in this Section, are given, conducted, produced or offered shall be as follows:

1st Class. If it is intended to produce, offer or present in any place entertainments of the first class and the highest price of admission charged thereto is one dollar ($1.00) or more the annual license fee shall be one thousand dollars ($1,000.00); if the highest price of admission exceeds fifty cents (.50) but is less than one dollar ($1.00) the annual license fee shall be four hundred dollars ($400.00); if the highest price of admission exceeds 30 cents, but does not exceed 50 cents, $300.00 per annum; if the highest price of admission exceeds 20 cents, but does not exceed 30 cents, $250.00 per annum; if the highest price of admission does not exceed 20 cents, $200.00 per annum.

2nd class, $200.00 per annum.

3rd Class, $100.00 per annum.

4th class, $200.00 per annum.

47 5th Class. If it is intended to produce conduct, offer or present in any place entertainments only of the Fifth class and the seating capacity of such place is sufficient to accommodate not exceeding 300 persons or if such place has a floor space not exceeding 2,400 square feet, the annual license fee shall be $25.00; if such place has a seating capacity sufficient to accommodate more than 300 persons, but not more than 500 persons, or a floor space exceeding 2,400 square feet, but not exceeding 4,000 square feet, $50.00 per annum; if such place has a seating capacity sufficient to accommodate more than 500 persons, but not more than 800 persons, or a floor space exceeding 4,000 square feet but not exceeding 6,400 square feet, $75.00 per annum; if such place has a seating capacity sufficient to accommodate more than 800 persons or a floor space exceeding 6,400 square feet, the annual license fee shall be $100.00. In computing floor space, aisle space, space between walls and the partitions of such place and balcony space shall be computed.

6th Class. $20.00 per week.

7th Class. $40.00 per week. Provided, however, that such license shall not authorize the production, conduct or offer of any entertainment within such park or grounds where an admission fee is charged therefor, nor the operation of any entertainment for gain; each of such entertainments shall be licensed in accordance with this ordinance.

8th class. $10.00 per annum.

9th class. $200.00 per annum.

10th class. If such place has a seating capacity sufficient to accommodate 15,000 persons or more, the annual license fee shall be $1,000.00; if the seating capacity of such place is sufficient

48 to accommodate less than 15,000 persons and not less than 10,000 persons $700.00 per annum; less than 10,000 persons and more than 4,000 persons, $300.00 per annum; if such place has a seating capacity sufficient to accommodate not exceeding 4,000 persons, $75.00 per annum.

11th class. If such place has a seating capacity sufficient to accommodate 500 persons or less the license fee shall be $5.00 per day; more than 500 persons, but not more than 1,000 persons, the license

fee shall be $10.00 per day; more than 1,000 persons but more *more* than 2,000 persons, $20.00 per day; more than 2,000 persons but not more than 3,000 persons, $30.00 per day; more than 3,000 persons but not more than 4,000 persons, $40.00 per day; more than 4,000 persons but less than 5,000 persons $50.00 per day; 5,000 persons or more, $60.00 per day.

The fee to be charged for each of the following ten classes of entertainments so given conducted, produced or offered shall be as follows:

12th Class. If it is intended to produce, conduct, offer or present entertainments only of the Twelfth class and the highest price of admission charged thereto shall exceed 75 cents, the license fee shall be $25.00 per day; if the highest price of admission exceeds 50 cents, but does not exceed 75 cents, $15.00 per day; if the highest price of admission exceeds 10 cents, but does not exceed 50 cents, $10.00 per day; and if the highest price of admission does not exceed 10 cents, $1.00 per day.

13th Class. If it is intended to produce, offer, or present entertainments only of the Thirteenth Class and the place in which such entertainment is to be given has a seating capacity sufficient to accommodate more than 6,000 persons, the license fee shall be $150.00 per day; more than 3,000 persons, but not more than 6,000 persons, $50.00 per day; more than 1,500 persons, but not more than 3,000 persons, $35.00 per day; more than 750 persons, but not more than 1,500 persons, $25.00 per day; more than 400 persons but not more than 750 persons, $10.00 per day; not more than 400 persons, $10.00 per month.

14th Class. $10.00 per day; provided, however, that if it is intended to conduct or operate entertainments of the 14th class at a permanent location during any part of the "summer season" as defined in this ordinance, a license for such entertainment may be issued for the fee fixed for amusements of the 1st class, subject to the restrictions set forth in section 109 hereof.

15th Class. $2.00 per week.

16th Class. $2.00 per week.

17th Class. $0.50 per week.

18th Class. $2.00 per week for each of such entertainments where the fee fixed or fare charged for a ride thereon does not exceed 5 cents; $5.00 a week for each of such entertainments where the fee fixed or fare charged for a ride thereon exceeds 5 cents, but does not exceed 10 cents; $10.00 a week where the fee fixed or fare charged for a ride thereon exceeds 10 cents.

19th class. $0.50 per week.

20th class. $50.00 per day.

21st class. $5.00 per day.

Section 105. (Where classes are Mixed.)—Where any entertainment embraces two or more classes above specified, such entertainments shall be classified and charged for as wholly belonging to that class for which the highest license fee is fixed.

Section 106. (License to be Posted.)—Every license issued under the provisions of this ordinance shall at all times during

the life thereof be posted in a conspicuous place at or near the principal entrance of the place described in the license, or in a conspicuous place therein so that the same may be easily read and seen by any person passing in or out of such place.

Section 107. (Entertainments Given During Alterations.)—Any person, firm or corporation licensed hereunder to produce, offer, present or conduct any of the foregoing classes of entertainments, may, while the building, structure or enclosure within which such entertainment is given is being altered or remodeled to such an extent as to require the closing thereof, give or produce such entertainment in or on any other part of the property owned or controlled by such licensee which immediately adjoins or is connected with the building, structure or enclosure in course of repair; provided, however, that the Commissioner of Buildings, the City Electrician and the Fire Marshal shall first certify in writing to the Mayor that such temporary place complies with all the requirements of ordinances of the City of Chicago; and provided, further, that such temporary place may be used for a period not exceeding any ten consecutive weeks for the foregoing purposes.

Section 108. (License Subject to Ordinance.)—Every license granted under the provisions of this ordinance shall at all times be subject to the ordinances of the City existing when the same
51 shall be issued or which shall thereafter be passed, so far as the same shall apply.

Section 109. (Licenses—How Prorated.)—Where any license is issued under the provisions of this ordinance and an annual license fee is fixed therefor, if less than six months of the annual license period shall have expired at the time of the issuing of such license the full license fee shall be charged therefor. If six months or more than six months of the annual license period shall have expired and if it appears that the applicant has not conducted, produced, offered or presented any of the foregoing classes of entertainments prior to the application for a license therefor, one-half of the full license fee shall be charged. Excepting as hereinafter provided, no license shall be issued for any part of a license year for a sum less than one-half of the full annual license fee. Where the license fee is fixed at so much per week, no license shall issue for a less period than ten weeks.

If any person, firm or corporation shall desire or intend to conduct, produce, offer, operate or present any of the foregoing entertainments only during the "Summer season," which is hereby defined as that period of the year between May 10th and October 10th, and shall make a statement in writing in his or its application for his or its desire or intention, a license may be issued to such person, firm or corporation for any number of weeks, but not less than ten, during the aforesaid season, for such entertainment, upon the payment to the City Collector of the license fees herein specified, when such license is fixed on a weekly basis or if such license fee is fixed upon an annual basis, upon payment to the City Collector of a
52 sum of money which shall bear the same ratio to the annual license fee as the number of weeks for which such license

shall continue in force bears to the whole number of weeks in the year.

Section 110. (Prohibition in Licenses—Revocations.)—All licenses for entertainments of any of the foregoing classes shall contain a proviso that no gaming, raffle, lottery or chance gift, distribution of money or articles of value shall be connected therewith or allowed by the person obtaining such license, or in any wise permitted to be held out as *in* inducement to visitors; such license shall also state the highest price of admission to be charged to any such entertainment; also the number of persons such licensed place has seating accommodations for, and no more than the highest price of admission fixed in said license shall be charged for admission to any such entertainment, and no more than that number of persons for which such place has seating accommodations *for*, shall be allowed to enter or occupy any such place at any one time.

When any licensed person or corporation shall be charged with having violated the provisions of his or its license as aforesaid, the Mayor is directed to give the parties accused reasonable notice thereof and to inquire into the truth of said charge, and if the accusation be sustained to his satisfaction he may revoke the license of any such person or corporation, and every such person or corporation so offending shall be subject to a penalty of not more than $100.00.

Section 111. (Frontage Consents and Other Prohibitions.)—It shall hereafter be unlawful for any person, firm or corporation to produce, offer, present or carry on any of the entertainments
53 of any of the foregoing classes, excepting Class Seven and Class Ten and Entertainments given within the grounds occupied by said Class Seven or Class Ten on any street in any block in which two-thirds of the buildings on both sides of the street are used exclusively for residence purposes, without the written consent of a majority of the property owners according to frontage on both sides of such street in such block; provided, however, that nothing herein contained shall apply to the foregoing classes of entertainments produced, offered or presented at the time of the passage of this ordinance.

It shall hereafter be unlawful for any person, firm or corporation to produce, offer, present or carry on entertainments of the Seventh Class or Tenth Class, as hereinafter defined, in any block or square in which two-thirds of the buildings on both sides of the street or streets around such block or square are used exclusively for residence purposes, without written consent of the owners of a majority of the frontage on both sides of the street or streets on each side of the block or square in which it is desired to produce, offer, present or carry on the aforesaid class of entertainments, together with the written consent to the production, offer or carrying on of such entertainment of a majority of the bona fide householders living within one thousand feet from the nearest point in any boundary of the place within which it is proposed to produce, offer, present, or carry on such entertainment; provided, however, that nothing herein contained shall apply to the foregoing class of entertain-

ment given within any place used for such purpose at the time of the passage of this ordinance.

54 Such frontage and householders' consents shall be obtained and filed with the Department of Buildings before a license shall issue for such entertainment. Provided, however, that:

(*a*) None of the foregoing twenty-one classes of entertainments shall be produced, offered, presented or carried on within two hundred feet of any hospital, church or building used exclusively for educational purposes; said distance to be measured between the nearest point in any boundary line of the place within which it is proposed to produce, offer, present or carry on such entertainment, and the boundary line of the lot on which such hospital, church or building used exclusively for educational purposes is located.

(*b*) In addition to the foregoing restrictions no license shall be issued for the production of any entertainment of the Thirteenth Class in any building, enclosure or place any part of which is situated within fifteen hundred feet of the boundary line of any public park, wholly or in part in the city.

SECTION 112. (Intoxicating Liquors.)—It shall not be lawful for any person to sell or give away any spirituous, vinuous, malt or other intoxicating liquors in any place in which public entertainments are given for gain, nor in any room or rooms connected with the same without a license or a special permit from the Mayor under a penalty of not more than one hundred ($100.00) dollars for each offense.

SECTION 2. That Sections 113 to 117, inclusive, of the Revised Municipal Code of Chicago of 1905; and ordinance relating to frontage consents for places of amusement, passed by the City

55 Council on December 21, 1908; an ordinance prohibiting the location of any place of amusement within two hundred feet of a church or building used exclusively for educational purposes, passed by the City Council on January 25, 1909; an ordinance requiring the securing of frontage and householders' consents for the location of amusement parks, passed by the City Council on May 24, 1909, together with all other ordinances and parts of ordinances inconsistent with the provisions of this ordinance, be and the same are hereby repealed.

SECTION 3. This ordinance shall be in full force and effect from and after January 1st, 1910.

EXHIBIT "B."

An Ordinance Amending Certain Sections of an Ordinance Passed by the City Council of the City of Chicago, on December 17, 1909, Relating to Amusements.

Be it ordained by the City Council of the City of Chicago:

SECTION 1. That that portion of section 1 of an ordinance concerning amusements passed by the City Council of the City of Chicago on December 17, 1909, designated as "Section 100" and appearing in the council proceedings of said date on page 2148, be and the same is hereby amended so as to read as follows:

SECTION 100. (License—Penalty.)—No person or corporation either as owner, lessee, manager, officer or agent shall give, conduct, produce present or offer for gain or profit any of the foregoing entertainments without a license issued for that purpose, which said license shall be issued and procured in the manner hereinafter set forth.

Any person or corporation violating any of the provisions of this section shall be fined not more than two hundred ($200.00) dollars for each offense and each and every day upon which any person or corporation shall give, conduct, produce, present, offer or operate any such entertainment contrary to or in violation of any of the provisions of this section shall constitute a separate and distinct offense.

SECTION 2. That those portions of the aforesaid ordinance relating to amusements, passed by the City Council on December 17, 1909, designated as "Section 101" and "Section 102" and appearing in the council proceedings of said date on pages 2148 and 2149, be and the same are hereby amended by consolidating said sections so that said consolidated sections shall be known as section 101, and when so amended shall read as follows:

SECTION 101. (Application for License.)—Any person or corporation desiring to produce, present, conduct, operate or offer for gain or profit any of the foregoing classes of entertainments at any place within the city shall make application to the Mayor in writing, setting out the full name and address of the applicant, if an individual, and if a corporation, the full name and residence of its principal officers; also a description of the place where it is proposed to produce, present, conduct, operate or offer such entertainment, a description of the kind and class of entertainment the highest price to be charged for admission thereto, exclusive of that charged for box seats, and the seating capacity of such place.

Whereupon, the Mayor shall make, or cause to be made, an examination of such place and if all the provisions of this ordinance and all of the ordinances of the City of Chicago relating to the giving of entertainments and of the location, construction and maintenance of the places within which such entertainments are given, are complied with, the Mayor shall issue, or cause to be issued, a license to such applicant, attested by the City Clerk which shall entitle the licensee to conduct, produce, present, operate or offer the class of entertainment specified in such license at the place designated in such application and for the period of time specified in such license, upon the payment of the license fee hereinafter specified.

SECTION 3. That that portion of section 1 of an ordinance concerning amusements, passed by the City Council of the City of Chicago on December 17, 1909, beginning with the words and figures "section 104" on the 7th line of the left hand column of said ordinance as it appears in the council proceedings of said date on page 2150 and concluding with the word "annum" on the 30th line of the left hand column of said ordinance as it appears in the council proceedings of said date on page 2150 be and is hereby amended by

striking out all of said portion of said ordinance and inserting in lieu thereof the following words and figures:

SECTION 101. License Fees.—Fee to be charged for a license to produce, present, conduct, operate, or offer any of the fore-
58 going classes of entertainments shall be as follows:

1st Class. If it be intended to produce, offer or present entertainments of the first class and the highest price of admission charged thereto, exclusive of that charged for box seats is one dollar ($1.00) or more the annual license fee shall be one thousand dollars ($1000); if the highest price of admission, exclusive of that charged for box seats, exceeds fifty cents ($.50) but is less than one dollar ($1.00) the annual license fee shall be four hundred dollars ($400.00) if the highest price of admission, exclusive of that charged for box seats, exceeds thirty cents ($.30) but does not exceed fifty cents ($.50) the annual license fee shall be three hundred dollars ($300.); if the highest price of admission, exclusive of that charged for box seats, exceeds twenty cents ($.20) but does not exceed thirty cents ($.30) the annual license fee shall be Two Hundred Fifty Dollars ($250.00); if the highest price of admission, exclusive of that charged for box seats does not exceed twenty cents (.20) the annual fee shall be Two Hundred dollars ($200.00).

SECTION 4. That said section 1 of said ordinance be and is hereby further amended by striking out therefrom the words "the fee to be charged for each of the following ten classes of entertainments so given, conducted, produced or offer-, shall be as follows:" as the same appears on lines seven to ten, inclusive, in the left hand column of page 2151 of said ordinance as it is printed in the Council Proceedings of December 17, 1909.

SECTION 5. That that portion of section 1 of an ordinance relating to amusements, passed by the City Council on December
59 17, 1909, designated as "Section 110" and appearing on pages 2152 and 2153 of the Council Proceedings of said date, be and the same is hereby amended so as to read as follows:

SECTION 110. Prohibitions in Licenses—Revocations.—All licenses for entertainments of any of the foregoing classes shall contain a proviso that no gaming, raffle, lottery or chance gift, distribution of money or article of value shall be connected therewith or allowed by the person obtaining such license, or in any wise permitted to be held out as an inducement to visitors; such license shall also state the highest price of admission to be charged to any such entertainment; also the seating capacity of the place in which it is proposed to give such entertainment, and no more than the highest price of admission fixed in said license shall be charged for admission to such entertainment, and no more than the number of persons for which such place, in which such entertainment is to be given, has seating capacity for shall be allowed to enter or occupy any such place at any one time. Provided, however, that any person, firm or corporation having a license limiting the maximum price which may be charged for admission to entertainments may at any time apply for a license authorizing such person, firm or corporation to charge a higher maximum price for admission to entertainments upon pay-

ing the difference between the license fee already paid and that to be charged by the terms of this ordinance for the license for which such application is made.

When any licensed person or corporation shall be charged with having violated the provisions of his or its license as aforesaid, the Mayor is directed to give the parties accused reasonable notice thereof and to inquire into the truth of said charge, and if the accusation be sustained to his satisfaction he may revoke the license of any such person or corporation and every such person or corporation so offending shall be subject to a penalty of not more than $100.00.

SECTION 6. This ordinance shall be in full force and effect from and after its passage, approval and publication.

Ordinance Dec. 17th, 1909. *Ordinance Jan. 10th, 1910.*

An Ordinance Amending Section 99 of the Revised Municipal Code of Chicago of 1905, as Amended, Sections 100 to 111 of the Revised Municipal Code of Chicago, of 1905, and Section 112 of the Revised Municipal Code of Chicago of 1905, as Amended, and Repealing Certain Sections of the said Code, and Certain Ordinances.

Be it Ordained by the City Council of the City of Chicago.

SECTION 1. That section 99 of the Revised Municipal Code of Chicago of 1905, as amended, Sections 100 to 111 of the Revised Municipal Code of Chicago of 1905, and Section 112 of the Revised Municipal Code of Chicago of 1905 as amended be and the same are hereby amended so as to read respectively as follows:

SECTION 99 (Classif-*ac*tion for License). That all theatricals, shows and amusements offered, operated, presented or exhibited for gain, or for admission to which the public is required to pay a fee, are hereby divided into the following twenty one classes. Such theatricals, shows and amusements are for the purpose of this ordinance herein- (Same.)

Ordinance Dec. 17th, 1909.	*Ordinance Jan. 10th, 1910.*
after referred to by the general term "entertainments" and the theater, opera house, auditorium, hall, park grounds, gardens, tent or other enclosure within which it it intended to produce, offer or present any such entertainments is for the purpose of this ordinance hereinafter referred to by the general term "place."	
61 1st Class. All entertainments of a theatrical, dramatic, operatic vaudeville, variety or spectacular character.	(Same.)
2nd Class. All lectures, readings or recitations, exhibits of paintings, stereopticon views, living pictures, panoramas, museums, panopticons, exhibits of statuary and of art and electric and mechanical shows.	(Same.)
3rd Class. All musical entertainments consisting solely of vocal or instrumental music or both vocal and instrumental music and not of the nature of an opera, but being what is commonly known and described as "concert."	(Same.)
4th Class. All exhibitions consisting solely of moving pictures, known as mutoscope, kinetoscope, cinematograph; kaleidoscope, penny arcades and places in which amusement is furnished through or by one or more automatic picture devices, or other similar devices.	(Same.)
5th Class. Dances, amateur theatrical entertainments, bazaars and other entertainments of like character carried on or engaged in, in any hall, structure or building.	(Same.)
6th Class. All grounds, gardens, or other enclosures of the kind commonly known and described as "Summer gardens"	(Same.)

Ordinance Dec. 17th, 1909.	*Ordinance Jan. 10th, 1910.*
where musical entertainments only (whether instrumental or vocal or both) are furnished.	
7th Class. All grounds, gardens or other enclosure of the kind commonly known and described as "Amusement Parks" wherein shows of different classes are offered or presented by one or more concessiona-res.	(Same.)
8th Class. All grounds, gardens or other enclosures of the kind commonly known and described as "Picnic grounds."	(Same.)
9th Class. All roller skating or ice skating rinks.	(Same.)
10th Class. All baseball, football, track and field games or other athletic exhibitions of like character.	(Same.)
11th Class. All wrestling matches.	(Same.)
12th Class. Poultry shows, horse shows, stock shows, flower shows, dog shows, cat shows, automobile shows, business and business appliance shows, industrial and trade shows, billiard, pool or bowling matches, exhibits or contests or balloons or aeronautic devices, or any similar entertainment intended to represent any sport, art or science or the progress and development of the same.	(Same.)
62 13th Class. All circuses, menageries or combined circuses and menageries wild west shows, dog and pony shows, monkey shows and caravans.	(Same.)
14th Class. All sideshows, concerts, vaudeville, variety, musical or minstrel entertainments and all entertainments known as "air domes" given under covering of canvas or within any structure or enclosure intended for temporary use and capable of easy transfer or removal.	(Same.)

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15th Class. All swimming and diving shows.	(Same.)
16th Class. All entertainments known as "platform" or "walk around" shows, being shows for which no seats are provided for spectators, and all entertainments known as "villages of different nationalities."	(Same.)
17th Class. All entertainments consisting of games of skill and strength testing devices, including lifting, blowing, striking or pulling machines and all small swings operated by human power.	(Same.)
18th Class. All entertainments operated by motive power other than animal power including devices, apparatus, attractions and amusements for the transportation of persons.	(Same.)
19th Class. All entertainments consisting of pony or animal rides or attractions operated by animal power for the transportation of persons.	(Same.)
20th Class. All exhibitions and displays of fireworks.	(Same.)
21st Class. All entertainments, exhibitions, performances, amusements not included in any of the foregoing classes.	(Same.)
SECTION 100 (License Penalty). No person or corporation, either as owner, lessee, manager officer or agent, or any other capacity shall give, conduct, produce, present or offer for gain or profit any of the entertainments mentioned in any of the first eleven of the foregoing classes anywhere within the city excepting in a duly licensed place, nor shall, any such person or corporation give, conduct, produce, present, operate or offer for gain or profit any of the entertainments mentioned in the last ten of the foregoing	SECTION 100 (License Penalty). No person or corporation either as owner, lessee, manager officer, or agent shall give, conduct, produce, present or offer for gain or profit any of the foregoing entertainments without a license issued for that purpose, which said license shall be issued and procured in the manner hereinafter set forth.

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classes without a license issued for that purpose, which said license shall be issued and procured in the manner hereinafter set forth.

63 Any person or corporation violating any of the provisions of this section shall be fined not more than two hundred ($200.00) dollars for each offense and each and every day upon which any such person or corporation shall give, conduct, produce, present, offer or operate any such entertainment contrary to or in violation of any of the provisions of this section shall constitute a separate and distinct offense.

SECTION 101 (Licenses for Places of entertainment of the first eleven classes). Any person or corporation, the owner or lessee of any place at or in which it is intended to produce, offer, present or carry on any of the entertainments of the first eleven classes desiring to secure a license for such place shall be granted such license under the following conditions:

The applicant shall make application in writing to the Mayor setting out his full name and address if an individual, and if a

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Any person or corporation violating any of the provisions of this section shall be fined not more than two hundred ($200.00) dollars for each offense and each and every day upon which any such person or corporation shall give, conduct, produce, present offer or operate any such entertainment contrary to or in violation of any of the provisions of this section shall constitute a separate and distinct offense.

(Change). Words in italics amended out by ordinance of Jan. 10th, and the word, "foregoing" inserted before the word entertainment in the 6th line of the old section. The new section purports to impose the duty to take out a license upon the producer of each class instead of, as in the old section, upon the owner of the place where the entertainment was of the first eleven classes, when it was of the remaining classes.

This section has been consolidated with old section 101, by dropping the first paragraph of old section 101 and making the first paragraph of old section 102 with a clause in reference to excluding box seats from computation when stating in application admittance fee charged, applicable to all classes. Old section 101 differed only from old section 102 in the first paragraph; the former section licensing the place where any of the entertainments of the first 11 classes were to be produced, the latter section li-

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corporation, the full name and residence of its principal officers; also a description of the place for which a license is desired and a statement of the class of entertainment which it is intended to produce, offer or present at such place; also the highest price to be charged for admission to any entertainment offered or presented at such place, and also the seating capacity of such place.

Whereupon, the Mayor shall make, or cause to be made, an examination of the place for which such license is desired, and if all of the provisions of this ordinance and all of the ordinances of the City of Chicago relating to the giving of entertainments and of the location, construction and maintenance of the places within which such entertainments
64 are given, are complied with and if the Commissioner of Buildings, the City Electrician and the Fire Marshal shall so certify, the Mayor shall issue, or cause to be issued, a license to such applicant, attested by the City Clerk, which shall entitle the licensee named therein to present, offer, produce or conduct at the place designated in such license and for the period of time specified in such license, entertainments of any one of the foregoing first eleven classes mentioned in said application, upon payment of the license fee hereinafter specified.

SECTION 102 (Application for License for Entertainments of the Twelfth to Twenty-first Classes, Inclusive). Any person or corporation desiring to produce, present, conduct, operate or offer for gain or profit any of the entertainments mentioned in classes

censing the producer of any of the other classes.

SECTION 101 (Application for License). Any person or corporation desiring to produce present, conduct, operate or offer for gain or profit any of the * foregoing classes of * entertainments at any place within the city shall make application

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twelve to twenty one, inclusive, at any place within the city shall make application to the Mayor in writing, setting out the full name and address of the applicant if an individual, and if a corporation the full name and residence of its principal officers; also a description of the place where it is proposed to produce, present, conduct, operate or offer such entertainment, a description of the kind and class of entertainment, the highest price to be charged for admission thereto and the seating capacity of such place.

Whereupon the Mayor
65 shall make, or caused to be made, an examination of such place and if all the provisions of this ordinance and all of the ordinances of the City of Chicago relating to the giving of entertainments and of the location, construction and maintenance of the places within which such entertainments are given are complied with, the Mayor shall issue or cause to be issued, a license to such applicant, attested by the City Clerk, which shall entitle the licensee to conduct produce, present, operate or offer the class of entertainments specified in such license at the place designated in such application and for the period of time specified in such license, upon the payment of the license fee hereinafter specified.

SECTION 1-3 (Mayor May Refuse a License—When). If the place at which it is desired to offer any of the foregoing entertain-

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to the Mayor in writing setting out the full name and address of the applicant, if an individual, and if a corporation, the full name and residence of its principal officers; also a description of the place where it is proposed to produce, present, conduct, operate or offer such entertainment, a description of the kind and class of entertainment, the highest price to be charged for admission thereto * exclusive of box seats * and the seating capacity of such place.

Whereupon the Mayor shall make or cause to be made, an examination of such place and if all the provisions of this ordinance and all of the ordinances of the City of Chicago relating to the giving of entertainments and of the location construction and maintenance of the places within which such entertainments are given are complied with, the Mayor shall issue, or cause to be issued, a license to such applicant attested by the City Clerk, which shall entitle the licensee to conduct, produce, present, operate or offer the class of entertainment specified in such license at the place designated in such application and for the period of time specified in such license, upon the payment of the license fee hereinafter specified.

(Changes.—New Section 1-1 differs from old section 1-2 in that the words in italic in old section 1-2 have been amended out and the words between stars have been inserted.

(Same.)

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ments be not a fit or proper place and not constructed, maintained, operated or conducted in accordance with the provisions of the ordinances of the City governing nd controlling said places, or if the entertainment desired to be produced or offered be of an immoral or dangerous character, or if the person making application for a license be not of a good moral character, the Mayor may refuse to approve such application and no license shall be issued by the City Clerk, except upon the approval of the Mayor.

SECTION 104 (License Fees). The fee to be charged for each place where, or in which, each of the first eleven classes of entertainments, as defined in this section, are given, conducted, produced or offered, shall be as follows:

1st Class. If it is intended to produce, offer or present in any place entertainments of the first class and the highest price of admission charged thereto is one dollar ($1.00) or more the annual license fee shall be one thousand dollars ($1000.00);

" if the highest price of admission exceeds fifty cents (.50) but is less than one dollar ($1.00) the annual license fee shall be four hundred dollars ($400) if the highest price of admission exceeds $.30 but does not exceed $.50, $300.00 per annum; if the highest price of admission exceeds $.20 but does not exceed $.30, $250.00 per annum;

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SECTION 104 (License Fees) The fee to be charged for a license to produce, present conduct, operate or offer any of the foregoing classes of entertainments shall be as follows:

(The first paragraph of old section 104 has been made to correspond with the changes in old section 101 and accordingl- purports to impose the license fee, exacted of the first eleven classes. upon the producer and not upon the place.)

First Class. If it be intended to produce, offer or present entertainments of the first class and the highest price of admission thereto exclusive of that charged for box seats, is one dollar ($1.00) or more. the annual license fee shall be one thousand dollars ($1000); if the highest price of admission. exclusive of that charged for box seats, exceeds fifty cents ($.50) but is less than one dollar ($1.00) the annual license fee shall be four hundred dollars ($400.00); if the highest price of admission exclusive of that charged for box seats, exceeds thirty cent- (.30) but does not exceed fifty cents ($.50) the annual license fee

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if the highest price of admission does not exceed $.20, $200.00 per annum.	shall be three hundred dollars ($300.00); if the highest price of admission, exclusive of that charged for box seats exceeds twenty cents (.20) but does not exceed thirty cents ($.30) the annual license fee shall be two hundred fifty dollars ($250.00) if the highest price of admission, exclusive of that charged for box seats does not exceed twenty cents (.20) the annual fee shall be two hundred dollars ($200.00). (This part has been changed by dropping the words in italics and in each instance excluding from the computation of price which is to fix the license fee of any entertainment of this class, the amount charged for box seats.)
2nd Class. $200.00 per annum.	(Same.)
3rd Class. $100.00 per annum.	(Same.)
4th Class. $200.00 per annum.	(Same.)
5th Class. If it is intended to produce, conduct, offer or present in any place entertainments only of the Fifth class and the seating capacity of such place is sufficient to accommodate not exceeding 300 persons or if such place has a floor space not exceeding 2,400 square feet, the annual license fee shall be $25.00 if such place has a seating capacity sufficient to accommodate more than 300 persons, but not more than 500 persons or a floor space exceeding 2,400 square feet but not exceeding 4,000 square feet, $50.00 per annum; if such place has a seating capacity sufficient to accommodate more than 500 persons, but not more than 800 persons, or a floor space exceeding 4,000 square feet but not exceeding 6,400 square feet, $75.00 per annum; if such place has a seating capacity sufficient to accommo-	(Same.)

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date more than 800 persons or a floor space exceeding 6,400 square feet, the annual license fee shall be $100.00. In computing floor space, aisle space, space between walls and the partitions of such place and balcony space shall be computed.	
6th Class. $20.00 per week.	(Same.)
67 7th Class. $40.00 per week. Provided, however, that such license shall not authorize the production, conduct or offer of any entertainment within such park or grounds where an admission fee is charged therefor, nor the operation of any entertainment for gain; each of such entertainments shall be licensed in accordance with this ordinance.	(Same.)
8th Class. $10.00 per annum.	(Same.)
9th Class. $200.00 per annum.	(Same.)
10th Class. If such place has a seating capacity sufficient to accommodate 15,000 persons, or more, the annual license fee shall be $1000.00; if the seating capacity of such place is sufficient to accommodate less than 15,000 persons and not less than 10,000 persons, $700.00 per annum; less than 10,000 persons and more than 4,000 persons, $300.00 per annum; if such place has a seating capacity sufficient to accommodate not exceeding 4,000 persons, $75.00 per annum.	(Same.)
11th Class. If such place has a seating capacity sufficient to accommodate 500 persons or less the license fee shall be $5.00 per day; more than 500 persons, but not more than 1,000 persons the license fee shall be $10.00 per day; more than 1,000 persons but not more than 2,000 persons, $20 per day; more than 2,000 persons but not more than 3,000 persons,	(Same.)

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$30.00 per day; more than 3,000 persons but not more than 4,000 persons, $40.00 per day; more than 4,000 persons but less than 5,000 persons, $50.00 per day; 5,000 persons or more, $60.00 per day.	
The fee to be charged for each of the following ten classes of entertainments so given, conducted produced or offered shall be as follows:	Words in italics have been dropped out.
12th Class. If it is intended to produce, conduct offer or present entertainments only of the twelfth class and the highest price of admission charged thereto shall exceed 75 cents, the license fee shall be $25.00 per day; if the highest price of admission exceeds $.50, but does not exceed $.75, $15.00 per day; if the highest price of admission exceeds 10 cents but does not exceed $.50, $10.00 per day; and if the highest price of admission does not exceed $.10, $1.00 per day.	(Same.)
13th Class. If it is intended to produce, offer, or present entertainments only of the Thirteenth class and the place in which such entertainment is to be given has a seating capacity sufficient to accommodate more than 6,000 persons, the license fee shall be $150.00 per day; more than 3,000 persons, but not more than 6,000 persons, $50.00 per day; more than 1,500 persons, but not more than 3,000 persons, $35.00 per day; more than 750 persons but not more than 1,500 persons, $25.00 per day; more than 400 persons, but not more than 750 persons, $10.00 per day; not more than 400 persons, $10.00 per month.	(Same.)
68 14th Class. $10.00 per day; provided, however, that if it is intended to conduct	(Same.)

or operate entertainments of the 14th class at a permanent location during any part of the "summer season" as defined in this ordinance, a license for such entertainment may be issued for the fee fixed for amusements of the 1st class, subject to the restrictions set forth in section 109 hereof.

15th Class. $2.00 per week. (Same.)

16th Class. $2.00 per week. (Same.)

17th Class. $0.50 per week. (Same.)

18th Class. $2.00 per week for each of such entertainments where the fee fixed or fare charged for a ride thereon does not exceed 5 cents; $5.00 a week for each of such entertainments where the fee fixed or fare charged for a ride thereon exceeds 5 cents, but does not exceed 10 cents; $10.00 a week where the fee fixed or fare charged for a ride thereon exceeds ten cents. (Same.)

19th Class. $0.50 per week. (Same.)

20th Class. $50.00 per day. (Same.)

21st Class. $5.00 per day. (Same.)

SECTION 105 (Where Classes are Mixed). Where any entertainment embraces two or more of the classes above specified, such entertainment shall be classified, and charged for as wholly belonging to that class for which the highest license fee is fixed. (Same.)

SECTION 106 (License to be Posted. Every license issued under the provisions of this ordinance shall at all times during the life thereof be posted in a conspicuous place at or near the principal entrance of the place described in the license, or in a conspicuous place therein so that the same may be easily read and seen by any person passing in or out of such place. (Same.)

SECTION 107 (Entertainments Given During Alterations). Any person, firm, or corporation (Same.)

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licensed hereunder to produce, offer, present or conduct any of the foregoing classes of entertainment, may, while the building, structure or enclosure within which such entertainment is given is being altered or remodeled to such an extent as to require the closing thereof, give or produce such entertainment in or on any other part of the property owned or controlled by such licensee which immediately adjoins or is connected with the building, structure or enclosure in course of repair; provided, however, that the Commissioner of Buildings, the City Electrician and the Fire Marshal shall first certify in writing to the Mayor that such temporary place complies with all the requirements of the ordinances of the City of Chicago; and provided, further, that such temporary place may be used for a period not exceeding any ten consecutive weeks for the foregoing purposes.

SECTION 108 (License Subject to Ordinance). Every license granted under the provisions of this ordinance shall at all times be subject to the ordinances of the City existing when the same shall be issued or which shall thereafter be passed, so far as the same shall apply. (Same.)

69 SECTION 109 (Licenses. How Prorated). Where any license is issued under the provisions of this ordinance and an annual license fee is fixed therefor, if less than six months of the annual license period shall have expired at the time of the issuing of such license the full license fee shall be charged therefor. If six months or more than six months of the annual license (Same.)

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period shall have expired and if it appears that the applicant has not conducted, produced, offered or presented any of the foregoing classes of entertainments prior to the application for a license therefor, one-half of the full license fee shall be charged. Excepting as hereinafter provided, no license shall be issued for any part of a license year for a sum less than one-half of the full annual license fee. Where the license fee is fixed at so much per week, no license shall issue for a less period than ten weeks.

If any person, firm or corporation shall desire or intend to conduct, produce, offer, operate or present any of the foregoing entertainments only during the "Summer season" which is hereby defined as that period of the year between May 10th and October 10th, and shall make a statement in writing in his or its application of his or its desire or intention, a license may be issued to such person, firm or corporation for any number of weeks, but not less than ten, during the aforesaid season, for such entertainment, upon the payment to the City Collector of the license fees herein specified, when such license is fixed on a weekly basis or if such license fee is fixed upon an annual basis, upon payment to the City Collector of a sum of money which shall bear the same ratio to the annual license fee as the number of weeks for which such license shall continue in force bears to the whole number of weeks in the year.

SECTION 110 (Prohibition in Licenses. Revocations). All licenses for entertainments of any of the foregoing classes shall con-

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(Same.)

SECTION 110 (Prohibitions in Licenses—Revocations). All licenses for entertainments of any of the foregoing classes shall con-

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tain a proviso that no gaming, raffle, lottery or chance gift, distribution of money or article of value shall be connected therewith or allowed by the person obtaining such license, or in any wise permitted to be held out as in inducement to visitors; such license shall also state the highest price of admission to be charged to any such entertainment; also the number of *persons such licensed place has seating accommodations* for, and no more than the highest price of admission fixed in said license shall be charged for admission to any such entertainment, and no more than that number of persons for whi*le* such place has seating accommodations, f o r, shall be allowed to enter or occupy any such place at any one time.

When any licensed person or corporation shall be charged with having violated the provisions of his or its license as aforesaid the Mayor is directed to give the parties accused reasonable notice thereof and to inquire into the truth of said charge, and if the accusation be sustained to his

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tain a proviso that no gaming, raffle, lottery or chance gift, distribution of money or article of value shall be connected therewith or allowed by the person obtaining such license, or in any wise permitted to be held out as an inducement to visitors; such license shall also state the highest price of admission to be charged to any such entertainment * also the seating capacity of the place in which it is proposed to give such enter t a i n m e n t * and no more than the highest price of admission fixed in said license shall be charged for admission to such entertainment, and no more than the number of persons for which such place * * in which such entertainment is to be given has seating capacity for * * shall be allowed to enter or occupy any such place at any one time; * * * provided, however, that any person, firm or corporation having a license limiting the maximum price which may be charged for admission to entertainment may at any time apply for a license authorizing such person, firm or corporation to charge a higher maximum price for admission to entertainments upon paying the difference between the license fee already paid and that to be charged by the terms of the ordinance for the license for which such application is made. * * *

When any licensed person or corporation shall be charged with having violated the provisions of his or its license as aforesaid. the Mayor is directed to give the parties accused reasonable notice thereof and to inquire into the truth of said charge, and if the accusation be sustained to his sat-

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satisfaction he may revoke the license of any such person or corporation, and every such person or corporation so offending shall be subject to a penalty of not more than $100.00.	isfaction he may revoke the license of any such person or corporation, and every such person or corporation so offending shall be subject to a penalty of not more than $100.00. (Part italicized has been changed, as indicated by part of amended section between stars and double stars, so as to avoid reference to licensed *place* and emphasize *entertainment*. Part between triple stars new.)
71 SECTION 111 (Frontage Consents and Other Prohibitions). It shall hereafter be unlawful for any person, firm or corporation to produce, offer, present, or carry on any of the entertainments of any of the foregoing classes, excepting class seven and class ten and entertainments given within the grounds occupied by said class seven or class ten on any street in any block in which two-thirds of the buildings on both sides of the street are used exclusively for residence purposes, without the written consent of a majority of the property owners according to frontage on both sides of such street in such block; provided, however, that nothing herein contained shall apply to the foregoing classes of entertainments produced, offered or presented at the time of the passage of this ordinance.	(Same.)
It shall hereafter be unlawful for any person, firm or corporation to produce, offer, present or carry on entertainments of the Seventh class or tenth class, as hereinafter defined, in any block or square in which two-thirds of the buildings on both sides of the street or streets around such block or square are used exclusively for	(Same.)

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residence purposes, without the written consent of the owners of a majority of the frontage on both sides of the street or streets on each side of the block or square in which it is desired to produce, offer, present or carry on the aforesaid class of entertainments, together with the written consent to the production offer or carrying on of such entertainment of a majority of the bona fide householders living within one thousand feet from the nearest point in any boundary of the place within which it is proposed to produce, offer, present or carry on such entertainment; provided, however, that nothing herein contained shall apply to the foregoing class of entertainment given within any place used for such purpose at the time of the passage of this ordinance.

Such frontage and householders' consents shall be obtained and filed with the Department of Buildings before a license shall issue for such entertainment. Provided, however, that:

(*a*) None of the foregoing twenty-one classes of entertainments shall be produced, offered, presented or carried on within two hundred feet of any hospital church or building used exclusively for educational purposes; said distance to be measured between the nearest point in any boundary line of the place within which it is proposed to produce, offer, present or carry on such entertainment, and the boundary line of the lot on which such hospital, church or building used exclusively for educational purposes is located.

(Same.)

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(*b*) In addition to the foregoing restrictions no license shall be issued for the production of any entertainment of the Thirteenth Class in any building enclosure or place any part of which is situated within fifteen hundred feet of the boundary line of any public park, wholly or in part in the city.	(Same.)
72 SECTION 112 (Intoxicating Liquors). It shall not be lawful for any person to sell or give away any spirituous, vinous, malt or other intoxicating liquors in any place in which public entertainments are given for gain, nor in any room or rooms connected with the same without a license or a special permit from the Mayor under a penalty of not more than one hundred — ($100.00) for each offense.	(Same.)
SECTION 2. That sections 113 to 117, inclusive of the Revised Municipal Code of Chicago of 1905; an ordinance relating to frontage consents for places of amusement, passed by the City Council on December 1, 1908; an ordinance prohibiting the location of any place of amusement within two hundred feet of a church or building used exclusively for educational purposes, passed by the City Council on January 25, 1909; an ordinance requiring the securing of frontage and householders' consents for the location of amusement parks, passed by the City Council on May 24, 1909, together with all other ordinances and parts of ordinances inconsistent with the provisions of this ordinance, be and the same are hereby repealed.	(Same.)
SECTION 3. This ordinance shall be in full force and effect from and after January 1st, 1910.	SECTION 6. This ordinance shall be in full force and effect from and after its passage, approval and publication.

And thereupon on the same day to-wit on the 31st day of January A. D. 1910 a certain Demurrer was filed in the office of the Clerk of said Court, in words and figures following to -wit:

STATE OF ILLINOIS,
Cook County, ss:

In the Circuit Court of Cook County.

METROPOLIS THEATER COMPANY et al.
v.
CITY OF CHICAGO.

The Demurrer of The City of Chicago, Defendant, to the Bill of Complaint Herein.

73 This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to said bill and for cause of said demurrer shows:

That said complainants have not in or by said bill stated or set forth facts that entitle said complainants to the relief therein prayed for or any portion thereof.

That in so far as any of the allegations in said bill of complaint contained tend to show, the ordinance in said bill of complaint contained does not nor does any part thereof violate the constitutional provisions in said bill of complaint referred to or any or either of them.

That in so far as it appears from said bill of complaint the said ordinance in said bill of complaint referred to and complained of is reasonable.

That in so far as it appears from said bill of complaint it is impossible to ascertain which, if any, of the complainants would be required to pay the one thousand dollars per annum license fee provided by the ordinance in said bill of complaint therein and thereby referred to.

That it does not appear from said bill of complaint that said ordinance does not apply with equal effect to all persons belonging to the various classes therein named.

74 That it does not appear from said bill of complaint that the classifications in said bill of complaint made or any or either of them are not well founded and made for good and sufficient reason.

That in so far as it appears from said bill of complaint, the City of Chicago is not by said ordinance in said bill of complaint referred to attempting to regulate the price of admission that the complainants or any or either of them may charge to persons desiring to witness entertainments to be produced by them.

Wherefore and for divers other good causes of said demurrer appearing in the said bill of complaint, this defendant demurs to said

bill and to all the matters and things therein contained, and prays the judgment of this honorable court whether it shall be compelled to make any further or other answer to the said bill, and it prays to be dismissed with its reasonable costs in this behalf sustained.

CITY OF CHICAGO,
By EDWARD J. BRUNDAGE,
Corporation Counsel, Solicitor for Defendant.

And afterwards to-wit on the 23rd day of February A. D. 1910 the following proceedings were had and entered of record in said Court to-wit:

75 STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court of Cook County.

Gen. No. 295,836. Term No. 7495. In Chancery.

METROPOLIS THEATER CO. et al.
vs.
CITY OF CHICAGO et al.

This cause comes on now to be heard upon the motion of the complainants for a temporary injunction, and upon the demurrer of the City of Chicago and Ernest J. Magerstadt, both the said defendants to the bill of complaint filed herein, and all of the parties having had due notice thereof, and being now present in court by their respective attorneys, and the court having heard the arguments of counsel, and being fully advised in the premises, finds:

1. That it has jurisdiction of the parties and of the subject matter hereof.

2. That section 104—1st class of the Amendatory Ordinance of January 10, 1910, of the City of Chicago, as amended, set forth in the bill of complaint, is discriminatory, illegal and void, and in violation of the Constitution of the State of Illinois, and more particularly section 2 of article II, and section 22 of article IV, and sections 1, 2 and 9 of article IX, or of one or more of said sections.

3. That the only question argued by counsel for the respective parties and considered by the court was the validity and constitutionality of that portion of section 104 of the ordinance in question, classifying amusements of the first class and fixing license fees in accordance with such classification.

76 Wherefore the premises considered it is hereby ordered, adjudged and decreed that the said demurrer to said bill of complaint be and the same is hereby overruled, and said defendants are hereby ruled to answer said bill of complaint *instanter*.

Whereupon, said defendants elect to stand by said demurrer and refuse to plead or answer said bill of complaint.

It is hereby further ordered, adjudged and decreed that a final decree be entered herein in favor of said complainants and against

said defendants enjoining and restraining said defendants, and each of them from enforcing or in any manner attempting to enforce as against said complainants, or either of them, section 104 of said alleged ordinance of said City of Chicago, as amended, of January 10, 1910, set forth in said bill of complaint.

To the entry of which order and decree and every part thereof, said defendants object and except and pray an appeal, which appeal is allowed to the Supreme Court of the State of Illinois.

STATE OF ILLINOIS,
County of Cook, ss:

I, Joseph E. Bidwill, Jr., Clerk of the Circuit Court of Cook County and the keeper of the records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete transcript of the record in a certain
77 cause lately pending in said court on the Chancery side thereof between Metropolis Theater Company et al., complainants, and City of Chicago et al., defendants.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Chicago, in said county, this 1st day of March, 1910.

[SEAL.] JOSEPH E. BIDWILL, JR., *Clerk.*

In the Supreme Court of Illinois, April Term, A. D. 1910.

METROPOLIS THEATER COMPANY et al., Appellees,
v.
CITY OF CHICAGO and E. J. MAGERSTADT, City Collector, Appellants.

Appeal from Circuit Court of Cook County.

Hon. Jesse A. Baldwin, Judge, Presiding.

Assignment of Errors.

Comes now the City of Chicago, appellant herein, and represents unto the court that in the record and proceedings had in the Circuit Court in the above entitled cause there is manifest error for which the decree of the court should be reversed, and among other errors shows unto the court the following:

(1) The decree of the court is contrary to the law.

(2) The Court erred in overruling the demurrer of the city to the bill of complaint.

(3) The court erred in entering a decree against the appellants.

(4) The court erred in holding that the ordinance in question violated section 1 of article 9 of the Constitution of the State of Illinois.

(5) The court erred in holding that the ordinance in
78 question violated section 2 of article 9 of the Constitution of the State of Illinois.

(6) The court erred in holding that the ordinance in question

violated section 9 of article 9 of the Constitution of the State of Illinois.

(7) The Court erred in holding that the ordinance in question violated section 22 of article 4 of the Constitution of the State of Illinois.

(8) The court erred in holding that the ordinance in question is invalid.

(9) The court erred in holding that the ordinance in question is void.

(10) The court erred in holding that the ordinance in question is unreasonable.

For the foregoing and other errors appearing on the face of the record, appellant asks that the decree of the Circuit Court be reversed.

EDWARD J. BRUNDAGE,
Corporation Counsel;
CHARLES M. HAFT,
JAMES F. BURNS,
Assistants Corporation Counsel,
Attorneys for Appellants.

79 At a Supreme Court begun and held at Springfield, on Tuesday, the fifth day of April, in the year of our Lord one thousand nine hundred and ten, within and for the State of Illinois.

Present: William M. Farmer, Chief Justice; James H. Cartwright, Justice; John P. Hand, Justice; Alonzo K. Vickers, Justice; Orrin N. Carter, Justice; Frank K. Dunn, Justice; George A. Cooke, Justice; William H. Stead, Attorney General; Warren C. Murray, Marshal.

Attest:

J. McCAN DAVIS, *Clerk.*

Be it remembered, to-wit, on the Sixteenth day of April A. D. 110, the same being one of the days of the term of Court aforesaid, the following proceedings were by said Court had and entered of record to-wit:

80 No. 7058.

METROPOLIS THEATER COMPANY et al., Appellees,
vs.
CITY OF CHICAGO et al., Appellants.

Appeal Circuit Court Cook.

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that appellants have filed herein a duly certified transcript of the record and procedings of the Court

below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellees having entered motion to affirm said judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

81 At a Supreme Court begun and held at Springfield, on Tuesday, the seventh day of June, in the year of our Lord one thousand nine hundred and ten, within and for the State of Illinois.

Present: Alonzo K. Vickers, Chief Justice; James H. Cartwright, Justice; John P. Hand, Justice; William M. Farmer, Justice; Orrin N. Carter, Justice; Frank K. Dunn, Justice; George A. Cooke, Justice; William H. Stead, Attorney General; Warren C. Murray, Marshal.

Attest:

J. McCAN DAVIS, *Clerk.*

Be it remembered, that afterwards, to-wit, on the 29th day of June, 1910, the opinion of the Court was filed in the words and figures following to-wit:

No. 7058.

METROPOLIS THEATER COMPANY et al., Appellees,
v.
CITY OF CHICAGO et al., Appellants.

Error to Appeal from Circuit Court Cook.

82 Docket No. 7058. Agenda, 23 April, 1910.

METROPOLIS THEATER COMPANY et al., Appellees,
v.
CITY OF CHICAGO, Appellant.

Mr. Chief Justice VICKERS delivered the opinion of the Court:

The Metropolis Theater Company and numerous other theatrical companies and individuals, as owners and operators of various theaters in the City of Chicago, filed their bill in the circuit court praying for an injunction against the enforcement of a city ordinance which classified theaters into five classes and fixed an annual

license fee for each, based on the price of admission, exclusive of that charged for box seats, on the ground that said ordinance is unreasonable and void. A demurrer was interposed to the bill by the city, which was overruled. The defendants declining to answer further, a decree was entered perpetually enjoining the enforcement of section 104 of the ordinance in question. The city has appealed to this court.

The only question presented is the validity of section 104 of the ordinance. Section 99 of the ordinance in question classifies all entertainments given for gain and puts theatrical, operatic, dramatic, vaudeville, variety and spectaclar entertainments in the first class. Section 104 fixes a license fee for the entertainments in the first class as follows:

"First class. If it be intended to produce, offer or present entertainments of the first class, and the highest price of admission charged thereto, exclusive of that charged for box seats, is one dollar ($1) or more, the annual license fee shall be one thousand dollars ($1000) if the highest price of admission, exclusive of that charged for box seats, exceeds fifty cents (50c) but is less than one dollar (1) the annual license fee shall be four hundred dol-
83 lars ($400); if the highest price of admission exclusive of that charged for box seats, exceeds thirty cents (30c) but does not exceed fifty cents (50c) the annual license fee shall be three hundred dollars ($300) if the highest price of admission, exclusive of that charged for box seats, exceeds twenty cents (20c) but does not exceed thirty cents (30c) the annual license fee shall be two hundred and fifty dollars ($250); if the highest price of admission, exclusive of that charged for box seats, does not exceed twenty cents (20c) the annual fee shall be two hundred dollars ($200).

Section 110 of the ordinance provides that the license issued shall state the highest price of admission that shall be charged for the entertainment to be given, also the seating capacity of the place, and that no more than the highest price shall be charged for admission to such entertainment, and that no more than the number of persons for which such place has seating capacity shall be allowed to enter or occupy such place at any one time. It provides that any person, firm or corporation having a license limiting the maximum price which may be charged for admission to entertainments, may at any time apply for a license authorizing such person to charge a higher maximum price for admission to entertainments upon paying the difference between the license fee already paid and that to be charged by the terms of the ordinance for the license for which such application is made.

The bill sets out in detail the situation of the several theaters, with the seating capacity of each, and alleges that many of the theaters which charge lower rates for admission, owing to their greater seating capacity and more frequent entertainments, have a much larger income than other theaters with less seating capacity which charge the lower prices for admission and upon this allegation

appellees base their principal argument against the validity
84 of the ordinance.

The power of taxation is a necessary incident of sovereignty and is possessed by the State without being expressly conferred by the people. This inherent power with us is vested in the legislature, which possesses plenary power over the subject except so far as it is restricted by our constitution or that of the United States. (1 Cooley on Taxation, 7; Porter v. Rockford, Rock Island and St. Louis Railroad Co. 76 Ill. 561.) The power to tax for local purposes, as well as the power to license and regulate, may be delegated by the legislature to local municipalities. (City of East St. Louis v. Wehrung, 46 Ill. 392.) Local municipalities have none of the elements of sovereignty in them. They do not possess, independently of grant, any inherent power. The statute under which they act is a grant of power and not a limitation, as is the constitution of the State. In the case of a municipal tax, its validity depends upon whether the power to levy it has been expressly granted while in respect to tax levied by the State the only question is, does the constitution prohibit it? A license is a privilege granted by the State directly or indirectly through the medium of a municipality, usually upon the payment of a valuable consideration, called a license fee. The license must confer authority to do something which would be illegal if done without such license. (Cooley on Taxation, 1137.) License fees may be imposed for regulation revenue or prohibition. (Bessette v. People, 193 Ill. 334.) The license fee may be both for regulation and revenue.

85 Section 1 of article 5, chapter 24, Hurd's Statutes of 1909 provides as follows: "The city council in cities, and president and the board of trustees in villages, shall have the following powers: * * * Forty first—To license, tax, regulate, suppress and prohibit hawkers, peddlers, pawnbrokers, keepers of ordinaries, theatricals and other exhibitions, shows and amusements, and to revoke such license at pleasure."

It is apparent from the language above quoted that the legislature intended to confer full power on cities and villages to "license, tax, regulate, suppress and prohibit" the several enumerated occupations, subject to no other limitations than are imposed by the constitution upon the legislature itself. The only limitation found in our constitution upon the power of the legislature to tax occupations is, that the tax shall be "uniform as to the class upon which it operates." (Const. 1870, art. 9, sec. 1.) The power given to cities and villages to tax and regulate theatrical and other exhibitions, shows and amusements, carries with it the power to classify the subjects and to fix a different license fee for each class. The power to classify must be exercised in a reasonable manner, but a very wide range of discretion is allowed legislative bodies in the exercise of this power. Where a license is levied solely as a regulatory measure the amounts should bear some reasonable relation to the additional burdens imposed by the business or occupation licensed, but where it is imposed for revenue or for revenue and

regulation, the relation between the license and the public burden imposed is not involved.

86 The bill in this case alleges that the additional expense to the city for inspection, police supervision, etc., does not exceed $50 for each theater per annum, and it is strenuously argued that the ordinance is unreasonable because the license fees are arbitrary and excessive. If the ordinance had been passed under the power merely to regulate theaters this argument would be entitled to serious consideration. But such is not the case here. The ordinance may be sustainable under the taxing power alone, without reference to its reasonableness as a regulatory measure.

Classification of subjects for taxation may not be made arbitrarily, but necessarily there must be great freedom of discretion, even though it result in ill advised unequal and oppressive legislation. (Heath v. Worst, 207 U. S. 338.) A classification will be sustained where it is based upon a reasonable difference of situations or conditions. (Bessette v. People, supra; Douglas v. People, 225 Ill. 536.) The classification of theaters made by the ordinance in question is based upon a difference in the charge of admission. Under this ordinance every person desiring to give an entertainment is left free to fix the charge of admission as he sees fit. He may thus elect into which class he desires to be placed. Presumably each person will select the class which will best promote his interests. It may be possible that this basis of classification is not the most equitable that could be devised, but, as was said by the United States Supreme Court in State Railroad Tax case, 92 U. S. 575: "Perfect equality and perfect uniformity of taxation as regards individuals or corporations, or the different classes of property subject to taxation, is a dream unrealized."

87 It has often been held by this court that section 1 of article 9 of the constitution, which requires taxes to be levied in proportion to the value of the property taxed, has no application to licenses when granted for the purpose of revenue. Wiggins Ferry Co. v. City of East St. Louis, 102 Ill. 560; Howland v. City of Chicago, 108 id. 496; People v. Steele, 231 id. 340.

We do not deem it necessary to review the numerous cases illustrating the discretion that may be exercised by legislative bodies in the classification of the subject of taxation. This entire subject has recently been reviewed by this court in Harder's Storage Co. v. City of Chicago, 235 Ill. 58, in which what is known as the Wheel Tax Ordinance was involved. Under the principle announced in that case and the authorities therein reviewed we have no doubt of the validity of section 104 of the ordinance involved in this case.

The judgment of the circuit court of Cook county is reversed and the case remanded with directions to that court to sustain the demurrer and dismiss the bill.

Reversed and remanded, with directions.

Mr. Justice Dunn dissenting.

88 At a Supreme Court begun and held at Springfield, on Tuesday, the Seventh day of June, in the year of our Lord one thousand nine hundred and ten, within and for the State of Illinois.

Present: Alonzo K. Vickers, Chief Justice; James H. Cartwright, Justice; Wiliam M. Farmer, Justice; Frank K. Dunn, Justice; John P. Hand, Justice; Orrin N. Carter, Justice; George A. Cooke, Justice; William H. Stead, Attorney General; Warren C. Murray, Marshal.

Attest:

J. McCAN DAVIS, *Clerk.*

Be it remembered, to-wit, on the twenty-ninth day of June, A. D. 1910, the same being one of the days of the term of Court aforesaid, the following proceedings were by said Court, had and entered of Record, to-wit:

No. 7058.

METROPOLIS THEATER COMPANY, A. W. DINGWALL, Individually and Ruth Carpenter Litt, Sol Litt and W. A. Dingwall, as Executors under the Last Will and Testament of Jacob Litt, Deceased; Amusement Company of Illinois, Harry J. Powers, Dillingham & Connor, Cort Theater Company, Grand Opera House Company, Great Northern Company, La Salle Theater Company, Princess Theater Company, Chicago Opera House Company, Olympic Amusement Company, Garrick Theater Company and Bertram C. Whitney, Appellees,

vs.

CITY OF CHICAGO and E. J. MAGERSTADT, City Collector, Appellants.

Appeal from Circuit Court, Cook County.

And now on this day, this cause having been argued by counsel, and the Court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matter and things therein assigned for Error, and now being sufficiently advised of and concerning the premises are of opinion that in the record and proceedings aforesaid and in the rendition of the judgment aforesaid, there is Manifest Error:

Therefore, it is considered by this Court that for that Error, and also in the record and proceedings aforesaid, the judgment of the Circuit Court in this behalf rendered, be reversed, annulled, set aside, and wholly for nothing esteemed, and this cause be remanded to the Circuit Court of Cook County, with directions to sustain the demurrer and dismiss the bill.

And it is further considered by the Court that the said Appellants recover of and from the said Appellees costs by them in this behalf expended, and that they have execution therefor.

89 At a Supreme Court, begun and held at Springfield on Tuesday, the Fourth day of October, in the year of our Lord one thousand nine hundred and ten, within and for the State of Illinois.

Present: Alonzo K. Vickers, Chief Justice; James H. Cartwright, Justice; William M. Farmer, Justice; Frank K. Dunn, Justice; John P. Hand, Justice; Orrin N. Carter, Justice; George A. Cooke, Justice; William H. Stead, Attorney General; Warren C. Murray, Bailiff.

Attest:

J. McCAN DAVIS, *Clerk.*

Be it remembered to-wit on the Twelfth day of October, A. D. 1910, the same being one of the days of the term of Court aforesaid the following proceedings were by said Court had and entered of record to-wit:

No. 7058.

METROPOLIS THEATER COMPANY et al., Appellees,
vs.
CITY OF CHICAGO et al., Appellants.

Appeal Circuit Court, Cook County.

Now on this day the Court having duly considered the petition for rehearing filed by the appellees herein and being now fully advised in the premises doth overrule the prayer of the petition and denys a rehearing of this cause.

90 *Authentication of Record.*

SUPREME COURT,
State of Illinois, ss:

I, J. McCan Davis, Clerk of said Court, do hereby certify that the foregoing is a true full and complete transcript of the record and proceedings in the case of

METROPOLIS THEATER COMPANY, A. W. DINGWALL, Individually and Ruth Carpenter Litt, Sol Litt and W. A. Dingwall, as Executors under the Last Will and Testament of Jacob Litt, Deceased; Amusement Company of Illinois, Harry J. Powers, Dillingham & Connor, Cort Theater Company, Grand Opera House Company, Great Northern Company, La Salle Theater Company, Princess Theater Company, Chicago Opera House Company, Olympic Amusement Company, Garrick Theater Company and Bertram C. Whitney, Appellees,

vs.

CITY OF CHICAGO and E. J. MAGERSTADT, City Collector, Appellants.

and also of the opinions of the court rendered therein, as the same now appears on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court, at Springfield, this 25th day of November, A. D., 1910.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

J. McCAN DAVIS,
Clerk Supreme Court.

91 Be it remembered, to-wit, that on the 15th day of November, A. D. 1910, there was duly filed by the appellees, Metropolis Theater Company et al., in the Office of the Clerk of the Supreme Court of Illinois, a petition for writ of error with assignments of error from the Supreme Court of the United States to the Supreme Court of Illinois addressed to the Hon. Alonzo K. Vickers, Chief Justice of the Supreme Court of Illinois, with the endorsement by the Chief Justice upon the said petition allowing said writ of error, which documents are in words and figures as follows, to wit:

92 UNITED STATES OF AMERICA,
State of Illinois, ss:

In the Supreme Court of Illinois, October Term, A. D. 1910.

No. 7058.

METROPOLIS THEATRE COMPANY et al., Appellees,
vs.
CITY OF CHICAGO et al., Appellants.

Petition for Writ of Error.

To the Honorable Chief Justice of the Supreme Court of the State of Illinois:

Now come your petitioners, Metropolis Theatre Company, a corporation, A. W. Dingwall, individually, Ruth Carpenter Litt, Sol Litt and A. W. Dingwall, as executors under the last will and testament of Jacob Litt, deceased, Amusement Company of Illinois, a corporation, Harry J. Powers, Dillingham & Connor, a corporation, Cort Theatre Company, a corporation, Grand Opera House Company, a corporation, Great Northern Company, a corporation, La Salle Theatre Company, a corporation, Princess Theatre Company, a corporation, Chicago Opera House Company, a corporation, Olympic Amusement Company, a corporation, Garrick Theatre Company, a corporation and Bertram C. Whitney, by Levy Mayer, Alfred S. Austrian and Herman Frank, their solicitors, and represent and state to the Honorable Chief Justice of the Supreme Court of the State of Illinois, that on June 29th, 1910, the Supreme Court of Illinois rendered a final judgment against your petitioners in a certain cause then pending before it, wherein your petitioners were appellees and the City of Chicago, a municipal

93

corporation of the State of Illinois, and Ernest J. Magerstadt, its collector, were appellants.

That said judgment reversed a judgment theretofore entered by the Circuit Court of Cook County, Illinois, rendered February 23, 1910, in favor of your petitioners and against said appellants.

That within the time prescribed by the rules of this Honorable court, and on July 23, 1910, your petitioners filed in this court their petition for a rehearing from the opinion of June 29, 1910.

That on October 12, 1910, this Honorable Court denied said petition for a rehearing.

That said Supreme Court of Illinois is the highest court of law or equity in said State of Illinois, in which a decision can be had in said suit, and in which said court said final judgment was rendered against your petitioners, as hereinbefore set forth, that the record of said suit is now presented to your Honor, and from said record it will appear and your petitioners represent and state the following:

1. That on the trial of said cause in said Circuit Court of Cook County, and in the Proceedings in said Supreme Court upon the review of said judgment of said Circuit Court, there was set up by your petitioners and each of them and drawn in question, and finally decided adversely to your petitioners and each of them by said
94 judgment of said Supreme Court, a claim of privilege and immunity belonging to your petitioners and each of them under the Fourteenth Amendment to the Constitution of the United States.

2. That from the record of said suit herewith presented to your Honor, it will appear that in said suit in said Circuit Court and in said proceedings in said Supreme Court, there was drawn in question by your petitioners and each of them the validity of a certain ordinance passed by the City of Chicago purporting to impose a license fee upon each of your petitioners.

3. That by the said record referred to it is shown that the validity of said ordinance was drawn in question in said suit by your petitioners and each of them in said Circuit Court and in the proceedings in said Supreme Court, and said ordinance was claimed by them and each of them to be invalid because it contravenes the Fourteenth Amendment to the United States Constitution, in that it deprives your petitioners of their property without due process of law and denies to them and each of them the equal protection of the law.

4. That the question of the constitutionality of said ordinance under the 14th Amendment to the Constitution of the United States so raised and drawn in question in said Circuit Court of Cook County and in said Supreme Court as depriving your petitioners and each of them of their property without due process of law and as denying to them and each of them of the equal protection of the laws,—is set up and presented in said record and is shown thereby to have been decided adversely to your petitioners and each of them, as will more particularly appear from the assignment of errors here-
95 inafter more particularly set forth, and hereto attached.

5. That as appears from such assignment of errors and the matters hereinabove set forth, the judgment of said Supreme Court

will deprive your petitioners and each of them, of their property without due process of law, and denies to them and each of them the equal protection of the laws in contravention of the 14th Amendment to the United States Constitution, and will take from them and each of them the rights, privileges and immunities accorded to them and each of them by the Constitution of the United States, and the 14th Amendment thereto, all of which will appear from the record and proceedings in said cause.

Wherefore, your petitioners pray that a writ of error issue in this behalf returnable unto the Supreme Court of the United States for the correction of errors so complained of and that a transcript of the record, proceedings and papers in this cause duly authenticated may be sent to the Supreme Court of the United States and your petitioners will ever pray.

METROPOLIS THEATRE COMPANY,
A. W. DINGWALL, *Individually*, AND
RUTH CARPENTER LITT,
SOL LITT, AND
A. W. DINGWALL,
As Executors under the Last Will and Testament of Jacob Litt, Deceased.
AMUSEMENT COMPANY OF ILLINOIS,
HARRY J. POWERS,
DILLINGHAM & CONNOR,
CORT THEATRE COMPANY,
GRAND OPERA HOUSE COMPANY,
96 GREAT NORTHERN COMPANY,
LA SALLE THEATRE COMPANY,
PRINCESS THEATRE COMPANY,
CHICAGO OPERA HOUSE COMPANY,
OLYMPIC AMUSEMENT COMPANY,
GARRICK THEATRE COMPANY, AND
BERTRAM C. WHITNEY,
By LEVY MAYER,
ALFRED S. AUSTRIAN,
HERMAN FRANK, *Their Solicitors.*

97 UNITED STATES OF AMERICA,
State of Illinois, ss:

In the Supreme Court of Illinois, October Term, A. D. 1910.

No. 7058.

METROPOLIS THEATRE COMPANY et al., Appellees,
vs.
CITY OF CHICAGO et al., Appellants.

Assignment of Errors.

Now come the petitioners, Metropolis Theatre Company, a corporation, A. W. Dingwall, individually, Ruth Carpenter Litt, Sol

Litt and A. W. Dingwall, as executors under the last will and testament of Jacob Litt, deceased, Amusement Company of Illinois, a corporation, Harry J. Powers, Dillingham & Connor, a corporation, Cort Theatre Company, a corporation, Grand Opera House Company, a corporation, Great Northern Company, a corporation, La Salle Theater Company, a corporation, Princess Theatre Company, a corporation, Chicago Opera House Company, a corporation, Olympic Amusement Company, a corporation, Garrick Theatre Company a corporation, and Bertram C. Whitney, by Levy Mayer, Alfred S. Austrian and Herman Frank, their solicitors, and say that in the record and proceedings in the above entitled cause there is manifest error in this:

1. The judgment of the Supreme Court of the State of Illinois, deprives them and each of them of their property without
98 due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

2. The judgment of said court denies to them and each of them the equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States.

3. The said court erred in holding that the ordinance of the City of Chicago passed June 10, 1910, if enforced will not deprive them and each of them of their property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

4. The said court erred in holding that said ordinance if enforced will not deny to them and each of them the equal protection of the laws in contravention of the Fourteenth Amendment of the Constitution of the United States.

5. The said court erred in not affirming the judgment of the Circuit Court of Cook County, Illinois.

6. The said court erred in reversing the judgment of the Circuit Court of Cook County, Illinois.

LEVY MAYER,
ALFRED S. AUSTRIAN,
HERMAN FRANK,
Solicitors for Petitioners.

The writ of error above applied for is hereby allowed upon the execution of a bond by the appellees in the sum of Five
99 Hundred dollars in the form provided by statute in such case and its approval.

ALONZO K. VICKERS,
Chief Justice of the Supreme Court of Illinois.

[Endorsed:] G. No. 7058. T. No. —. Supreme Court of Illinois. Metropolis Theatre Company et al., Appellees, vs. City of Chicago et al., Appellants. Petition for writ of error and assignment of errors. Filed Nov. 15, 1910. J. McCan Davis, Clerk of Supreme Court. Mayer, Meyer, Austrian & Platt, American Trust Bldg., Chicago. Tel. Central 2780.

100 Be it remembered that on the 15th day of November A. D. 1910 there was duly filed in the office of the Clerk of the Supreme Court of Illinois by Metropolis Theater Company et al., appellees, an original bond for writ of error from the Supreme Court of the United States to the Supreme Court of Illinois in words and figures as follows to-wit:

101 Know all men by these presents, that we, Metropolis Theatre Company, a corporation, A. W. Dingwall, individually, Ruth Carpenter Litt, Sol Litt and A. W. Dingwall, as executors under the last will and testament of Jacob Litt, deceased, Amusement Company of Illinois, a corporation, Harry J. Powers, Dillingham & Connor, a corporation, Cort Theatre Company, a corporation, Grand Opera House Company, a corporation, Great Northern Company, a corporation, La Salle Theatre Company, a corporation, Princess Theatre Company, a corporation, Chicago Opera House Company, a corporation, Olympic Amusement Company, a corporation, Garrick Theatre Company, a corporation and Bertram C. Whitney, as principals and the Fidelity & Deposit Company of Maryland as surety, are held and firmly bound unto the City of Chicago and Ernest J. Magerstadt, in the full and just sum of five hundred dollars ($500.00) to be paid to the said City of Chicago and Ernest J. Magerstadt, their certain attorney, successors, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 12th day of November, in the year of our Lord, one thousand nine hundred and ten.

Whereas, lately at a session of the Supreme Court of the State of Illinois, in a suit pending in said court between Metropolis Theatre Company, a corporation, A. W. Dingwall, individually, Ruth Carpenter Litt, Sol Litt and A. W. Dingwall, as executors under the last will and testament of Jacob Litt, deceased, Amusement
102 Company of Illinois, a corporation, Harry J. Powers, Dillingham & Connor, a corporation, Cort Theatre Company, a corporation, Grand Opera House Company, a corporation, Great Northern Company, a corporation, La Salle Theatre Company, a corporation, Princess Theatre Company, a corporation, Chicago Opera House Company, a corporation, Olympic Amusement Company, a corporation, Garrick Theatre Company, a corporation and Bertram C. Whitney, appellees herein and City of Chicago and Ernest J. Magerstadt, appellants therein, a judgment was rendered against the said appellees and the said appellees having prayed for and obtained a writ of error returnable into the Supreme Court of the United States to reverse the judgment in the aforesaid suit.

Now the condition of the above obligation is such, that if the said appellees shall prosecute their writ to effect, and shall answer all damages and costs that may be awarded against them if they fail

to make this plea good, then the above obligation to be void; to otherwise remain in full force and virtue.

METROPOLIS THEATRE COMPANY,
A. W. DINGWALL, *Individually,* AND
RUTH CARPENTER LITT,
SOL LITT, AND
A. W. DINGWALL,
As Executors Under the Last Will and Testament of Jacob Litt, Deceased;
AMUSEMENT COMPANY OF ILLINOIS,
HARRY J. POWERS,
DILLINGHAM & CONNOR,
CORT THEATRE COMPANY,
GRAND OPERA HOUSE COMPANY,
GREAT NORTHERN COMPANY,
LA SALLE THEATRE COMPANY,
102½ PRINCESS THEATRE COMPANY,
CHICAGO OPERA HOUSE COMPANY,
OLYMPIC AMUSEMENT COMPANY,
GARRICK THEATRE COMPANY, AND
BERTRAM C. WHITNEY,
By MAYER, MEYER, AUSTRAIN & PLATT AND
HERMAN FRANK, *Their Attorneys.*

[SEAL.]

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By ARTHUR C. ARNOLD,
Agent and Attorney in Fact.

Sealed and delivered in presence of—

ALFRED L. AUSTRIAN,
Solicitor & of Counsel.

Approved by

ALONZO K. VICKERS,
Chief Justice Supreme Court of Illinois.

O. K.

CHARLES M. HAFT,
Assistant Corporation Counsel.

103 Be it remembered that on the 15th day of November A. D. 1910, there was duly filed in the office of the Clerk of the Supreme Court of Illinois, an original writ of error, which is hereby attached and is in words and figures as follows, to-wit:

104 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, between Metropolis Theatre Company, a corporation, A. W. Dingwall, individually, Ruth Carpenter Litt, Sol Litt and A. W. Dingwall, as executors under the last will and testament of Jacob Litt, deceased, Amusement Company of Illinois, a corporation, Harry J. Powers, Dillingham & Connor, a corporation, Cort Theatre Company, a corporation, Grand Opera House Company, a corporation, Great Northern Company, a corporation, La Salle Theatre Company, a corporation, Princess Theatre Company, a corporation, Chicago Opera House Company, a corporation, Olympic Amusement Company, a corporation, Garrick Theatre Company, a corporation and Bertram C. Whitney, and City of Chicago, a municipal corporation and Ernest J. Magerstadt, its collector, wherein was drawn in question the validity of an ordinance of the City of Chicago and an authority exercised under said state and city on the ground of their being repugnant to the 14th Amendment to the Constitution of the United States and the decision was in favor of their validity and wherein was drawn in question the construction of such amendment to the said constitution and the decision was against the title, right, privilege and exemption, specially set up and claimed under such amendment, and a manifest error hath
105 happened, to the great damage of the said Metropolis Theatre Company, a corporation, A. W. Dingwall, individually, Ruth Carpenter, Litt, Sol Litt and A. W. Dingwall, as executors under the last will and testament of Jacob Litt, deceased, Amusement Company of Illinois, a corporation, Harry J. Powers, Dillingham & Connor, a corporation, Cort Theatre Company, a corporation, Grand Opera House Company, a corporation, Great Northern Company, a corporation, La Salle Theatre Company, a corporation, Princess Theatre Company, a corporation, Chicago Opera House Company, a corporation, Olympic Amusement Company, a corporation, Garrick Theatre Company, a corporation, and Bertram C. Whitney as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within 30 days from the date hereof, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States Should be done.

Witness the Honorable John M. Harlan Senior Associate Justice

of the Supreme Court of the United States, the 14th day of November, in the year of our Lord one thousand nine hundred and ten.

[Seal of Circuit Court U. S., Northern Dist. Illinois. 1855.]

JOHN H. R. JAMAR,
Clerk of the Circuit Court of the United States for the Northern District of Illinois.

Allowed by
ALONZO K. VICKERS,
Chief Justice of the Supreme Court of Illinois.

[Endorsed:] Metropolis Theatre Company et al. vs. City of Chicago et al. Writ of Error. Filed Nov. 15, 1910. J. McCan Davis, Clerk of Supreme Court.

106 *Certificate of Lodgment.*

SUPREME COURT,
State of Illinois, ss:

I, J. McCan Davis, Clerk of the Supreme Court, do hereby certify that there was lodged with me as such Clerk on the 15th day of November, A. D. 1910, in the matter of Metropolis Theater Company, A. W. Dingwall, individually and Ruth Carpenter Litt, Sol Litt and W. A. Dingwall, as executors under the last will and testament of Jacob Litt deceased, Amu-ement Company of Illinois, Harry J. Powers, Dillingham & Connor, Cort Theater Company, Grand Opera House Company, Great Northern Company, La Salle Theater Company, Princess Theater Company, Chicago Opera House Company, Olympic Amusement Company, Garrick Theater Company and Bertram C. Whitney, Appellees, vs. City of Chicago and E. J. Magerstadt, City Collector, Appellants.

1. The original bond, of which a copy is herein set forth.
2. A copy of the writ of error to file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court, at Springfield, Ill. this 25th day of November, 1910.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

J. McCAN ADAMS,
Clerk Supreme Court.

107 Be it Remembered to-wit on the 15th day of November A. D. 1910, the original citation showing service on attorneys for defendant in error, was filed in the office of the Clerk of the Supreme Court in words and figures following, to-wit:

108 UNITED STATES OF AMERICA, *ss:*

To The City of Chicago and Ernest J. Magerstadt, Greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington within thirty (30) days from the date hereof, pursuant to a writ

of error filed in the clerk's office of the Supreme Court of the State of Illinois, wherein Metropolis Theatre Company, a corporation, A. W. Dingwall, individually, Ruth Carpenter Litt, Sol Litt, and A. W. Dingwall, as executors under the last will and testament of Jacob Litt, deceased, Amusement Company of Illinois, a corporation, Harry J. Powers, Dillingham & Connor, a corporation, Cort Theatre Company, a corporation, Grand Opera House Company, a corporation, Great Northern Company, a corporation, La Salle Theatre Company, a corporation, Princess Theatre Company, a corporation, Chicago Opera House Company, a corporation, Olympic Amusement Company, a corporation, Garrick Theatre Company, a corporation and Bertram C. Whitney are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Alonzo K. Vickers, Chief Justice of the Supreme Court of the State of Illinois, this 16th day of No-
109 vember in the year of our Lord one thousand nine hundred and ten.

ALONZO K. VICKERS,
Chief Justice of the Supreme Court of the State of Illinois.

Copy of the foregoing citation received this 18 day of November.

CHARLES M. HAFT,
Assistant Corporation Counsel,
Attorney for Defendants in Error.

[Endorsed:] Metropolis Theater Company vs. City of Chicago. Citation. Filed Nov. 15, 1910. J. McCan Davis, Clerk of Supreme Court.

110 *Return to Writ.*

UNITED STATES OF AMERICA,
Supreme Court of Illinois, ss:

In obedience to the commands of the within writ I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of said Supreme Court of Illinois, in the City of Springfield, this 25th day of November A. D. 1910.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

J. McCAN DAVIS,
Clerk Supreme Court of Illinois.

Endorsed on cover: File No. 22,429. Illinois Supreme Court. Term No. 808. Metropolis Theatre Company et al., plaintiffs in error, vs. The City of Chicago and Ernest J. Magerstadt. Filed December 2d, 1910. File No. 22,429.

5

Supreme Court, U. S.
FILED.
JAN 22 1913
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1912.

No. 181

METROPOLIS THEATRE COMPANY ET AL.,
Plaintiffs in Error,

vs.

THE CITY OF CHICAGO AND ERNEST J. MAGERSTADT,
Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR

In support of the contention that the ordinance of Chicago imposing an annual license fee of $1000 upon theatres charging a dollar or more for any seat (exclusive of box seats) violates the 14th Amendment.

LEVY MAYER and
ALFRED S. AUSTRIAN,
Attorneys for Plaintiffs in Error.

BUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

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ARGUMENT—

WHILE CLASSIFICATION IS PERMISSIBLE IN AN ORDINANCE IMPOSING A LICENSE FEE EITHER FOR THE PURPOSES OF REGULATION OR REVENUE, THE DISTINCTIONS CREATED BY SUCH AN ORDINANCE MUST BEAR SOME REASONABLE AND JUST RELATION TO THE SUBJECT-MATTER OF THE CLASSIFICATION, AND TO THE PROPOSED PURPOSES OF THE ORDINANCE; AND IF AN ARBITRARY AND IMPROPER CLASSIFICATION IS MADE, THE ORDINANCE CAN NOT BE SUSTAINED, AS A PERSON DISCRIMINATED AGAINST BY SUCH AN ORDINANCE IS DEPRIVED OF THE EQUAL PROTECTION OF THE LAW, AND SUFFERS THE DEPRIVATION OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW.....12-27

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1912.

No. 181

METROPOLIS THEATRE COMPANY ET AL.,
Plaintiffs in Error,

vs.

THE CITY OF CHICAGO AND ERNEST J. MAGERSTADT,
Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR.

STATEMENT OF FACTS.

This is a writ of error to reverse a judgment of the Supreme Court of the State of Illinois which upheld the validity of an ordinance of the City of Chicago under which that city through its collector claims the right to collect a so-called license fee of One Thousand Dollars ($1,000) a year, im-

posed by said ordinance upon each of the fourteen (14) plaintiffs in error (hereinafter referred to as complainants), owners and operators of theaters in Chicago.

The Supreme Court of Illinois reviewed the ordinance on an appeal taken by the City of Chicago, and its collector from a decree of the Circuit Court of Cook County, Illinois, which latter court found the ordinance invalid and enjoined its enforcement. The bill filed by the complainants (to which the defendants interposed a demurrer) attacked the ordinance on the ground that it was beyond the power of the city to pass and repugnant to both the State Constitution and the Fourteenth Amendment. The federal question is involved in the claim made in the bill that the ordinance is invalid because it provides for an arbitrary classification of theaters for licensing purposes. (Rec., 19.)

The ordinance was originally passed December 17, 1909, but upon the complainants in this suit, together with others, filing a bill to enjoin its enforcement, it was on January 10th, 1910, amended in certain particulars. Thereupon the complainants herein, on January 31, 1910, filed the present bill.*

The ordinance as amended covers in its scope the licensing of all amusements in Chicago. By it (Rec., 32) all theatricals, shows and amusements offered or presented for gain are divided into twenty-one

*The ordinance of December 17th, 1909, will be found on pages 21 to 29 and the amending ordinance of January 10, 1910, on pages 29 to 32 of the record. On pages 32 to 49 of the record will be found in parallel columns the ordinance of December 17, 1909, and the amending ordinance of January 10, 1910, showing in convenient form in what respects the first ordinance was amended by the second.

classes. The entertainments offered by complainants fall within the first class which is defined as "all entertainments of a theatrical, dramatic, vaudeville, variety or spectacular character." (Rec., 33.) By Section 104 of the ordinance (the ordinance when passed being numbered with reference to the Municipal Code of 1905 of Chicago), it is provided (Rec., 39, 40):

> "The fee to be charged for a license to produce, present, conduct, operate or offer * * * entertainments shall be as follows:
>
> *First Class:* If it be intended to produce, offer or present entertainments of the first class and the highest price of admission thereto exclusive of that charged for box seats, is $1.00 or more, the annual license fee shall be $1,000.
>
> If the highest price of admission, exclusive of that charged for box seats, exceeds 50 cents, but is less than $1.00, the annual license fee shall be $400.
>
> If the highest price of admission exclusive of that charged for box seats exceeds 30 cents but does not exceed 50 cents the annual license fee shall be $300.
>
> If the highest price of admission exclusive of that charged for box seats exceeds 20 cents, but does not exceed 30 cents, the annual license fee shall be $250.
>
> If the highest price of admission exclusive of that charged for box seats does not exceed 20 cents the annual license fee shall be $200."

Facts Alleged In the Bill and Admitted by the Demurrer.

The bill alleges that each complainant is the owner and proprietor of a theater in the City of Chicago, that the theaters owned by the complainants have respectively the following seating capacities, viz.: Four hundred and eighty-two, sixteen hundred and eighty-eight, twelve hundred and forty-nine, eleven hundred and fifteen, thirteen hundred and fifty, nine hundred and sixty-two, thirteen hundred and seventy-nine, twelve hundred and five, seven hundred and seventy, nine hundred and fifty, four hundred and thirty-four, fifteen hundred and thirty-two, twelve hundred and fifty-nine, and seven hundred and eight. (Rec., 2-5.)

That the seats in each of the complainants' theaters are sold for different prices for the same entertainment, ranging from twenty-five cents upward to a dollar or more, exclusive of box seats, and that the prices for the seats in each of the complainant's theaters varies with the different theatrical productions there presented. (Rec., 5-6.)

That in complainants' theaters, theatrical entertainments are produced from time to time by traveling companies which are not owned or controlled by the complainants; that the only interest the complainants have in such companies is that they should produce a good show, and that the only interest the owners of such traveling companies have in the complainants' business is that the complainants

should pay them compensation for such productions. (Rec., 13.)

That ordinarily very many different companies play at each theater during a season, but sometimes one production will be continued for a longer period in a single theater and that some of the theaters are open the entire year, and others open only a comparatively brief season. (Rec., 14.)

That the revenue of the theater is not measured or even indicated by the prices charged for the most expensive seats therein (Rec., 15); that in some theaters there are very many low priced seats and a few expensive seats, and in some theaters many expensive seats and a few low priced seats; that the gross revenue from the theaters owned by several of the complainants is much less than the gross revenue from larger theaters owned by proprietors not complainants in the bill, whose highest charge for seats other than box seats is less than one dollar. (Rec., 10, 11, 15.)

That the gross revenue from the largest theater in Chicago, whose proprietors are not parties to the bill is much larger than the gross revenue of any of complainants, and many times in excess of the combined revenues of several of the complainants' theaters.

That there are a number of theaters in Chicago in which the highest charge for admission (exclusive of box seats) is less than one dollar, whose gross and net revenue is more than double that of some of the theaters owned by complainants. (Rec., 7.)

That there is no distinction between box seats and other seats, excepting the grouping of said seats and that in some of the theaters wherein the highest price of admission (exclusive of box seats) is less than one dollar, a large proportion of the seats are divided into so-called box seats, for which prices of One Dollar or more are charged, while in the theaters owned by the complainants comparatively few of the seats are divided into so-called box seats. (Rec., 14, 15.)

That in a number of theaters in Chicago in which the highest price of admission, exclusive of box seats, is above one dollar and in which the highest price of admission exclusive of box seats is less than one dollar, the capacities of said theaters respectively could be easily transformed so that in said theaters there would be nothing but box seats.

That exactly the same number of players are employed, and the same scenery and paraphernalia are used to give the entertainments of Class One in theaters and places of amusement in Chicago, irrespective of whether the theaters or places of amusement in which such entertainments are given charge for the highest price of admission (other than for box seats) one dollar or less than one dollar. (Rec., 15.)

That box seats are identical with other seats in theaters except that they are separated by ribbon, cord, rail or small partition into groups of four, six, eight or twelve seats. (Rec., 14.)

That it is impossible to fix in advance the prices to be charged at complainant's theaters during the

licensed period as such prices depend upon a number of things over which complainants have no control, included among which is the popularity of the theatrical attraction. (Rec., 6.)

That the cost to the City of Chicago for the regulation, examination and protection of a theater does not in anywise depend upon the prices charged for the highest priced seat other than box seats in such theaters, but on the contrary the cost of regulation, examination and protection of a theater is much greater in the larger theaters, charging lower prices than in the smaller theaters charging higher prices (Rec., 15, 16); that the cost to the City of Chicago for inspection, supervision or regulation of any of the complainants' theaters does not exceed the sum of Fifty Dollars per year (Rec., 13); that each of the complainants pays certain specified fees for inspection, protection and regulation (Rec., 17, 19), and pays its proportionate share of municipal and other taxes. (Rec., 8.)

That the respective complainants have invested large sums of money in building and fitting up their places for the purpose of giving theatrical entertainments, which investments will be rendered almost valueless if their use for theatrical entertainments is prevented. (Rec., 8.)

The bill of complaint then sets up the facts concerning the passing of the original ordinance, the bill filed to enjoin the same and the subsequent passing of the amended ordinance, and charges:

That the ordinance as amended and more partic-

ularly, section 104 thereof is illegal, unreasonable and discriminatory and void (Rec., 18); that it is illegal and void in that it discriminates or imposes different rates for licensing theaters or places of amusements, based only and solely upon the highest price of admission charged to such places of amusements (exclusive of box seats), and that such classification has no bearing upon the regulation or imposing of a license fee upon such places of amusements. (Rec., 19.)

That the ordinance is beyond the power of the city and each and every one of the provisions thereof is illegal and void and violative of the Constitution of the United States and more particularly, of the Fourteenth Amendment. (Rec., 19.)

All the above facts are set forth in the bill with much particularity, are supported by many allegations of details and full statements of explanatory circumstances and are admitted by the demurrer.

Reduced to its simplest form the bill attacks the validity of the ordinance on the ground that a classification of theaters either for purposes of regulation or taxation based upon the highest price of admission charged for a single seat and without regard to seating capacity, or gross or net revenue or cost of inspection or some other real distinction, is arbitrary and improper, especially in a case where as here, the admission price to certain seats, viz.: box seats, is excluded from the standard of classification.

The Supreme Court of Illinois (two judges dissenting,—one of them after a petition for rehearing

had been filed—246 Ill., 20) sustained the ordinance as one passed under the taxing power (Rec., 57), and upheld its validity on the ground that the classification was not an improper one to make for purposes of taxation. That court said (246 Ill., 20, 24, 25, Rec., 56):

> "Where the license is levied simply as a regulatory measure the amount should bear some reasonable relation to the additional burdens imposed by the business or occupation licensed, but where it is imposed for revenue or for revenue and regulation the relation between the license and the public burden imposed is not involved.
>
> The bill in this case alleges that the additional expense to the city for inspection, and police supervision does not exceed Fifty Dollars ($50) for each theater per annum and it is strenuously argued that the ordinance is illegal because the license fees are arbitrary and excessive. If the ordinance had been passed merely under the power to regulate these theaters, these arguments would be entitled to serious consideration, but such is not the case here. The ordinance may be sustained under the taxing power alone without reference to its reasonableness as a regulatory measure. Classification of subjects for taxation may not be made arbitrarily, but necessarily there must be great freedom of discretion."

Errors Relied Upon.

The specific errors relied upon by plaintiffs in error are as follows (Rec., 62, 63):

1. The judgment of the Supreme Court of the State of Illinois deprives them and each of them of their property without due process of law in contravention of the Fourteenth Amendment.

2. The judgment of that court denies to them and each of them the equal protection of the laws in contravention of the Fourteenth Amendment.

3. Said court erred in holding that the ordinance of the City of Chicago passed June (January) 10, 1910, if enforced will not deprive them and each of them of their property without due process of law in contravention of the Fourteenth Amendment.

4. Said court erred in holding that said ordinance if enforced will not deny to them and each of them the equal protection of the laws in contravention of the Fourteenth Amendment.

5. Said court erred in reversing the judgment of the Circuit Court of Cook County, Illinois.

BRIEF.

WHILE CLASSIFICATION IS PERMISSIBLE IN AN ORDINANCE IMPOSING A LICENSE FEE EITHER FOR THE PURPOSES OF REGULATION OR REVENUE, THE DISTINCTIONS CREATED BY SUCH AN ORDINANCE MUST BEAR SOME REASONABLE AND JUST RELATION TO THE SUBJECT-MATTER OF THE CLASSIFICATION, AND TO THE PROPOSED PURPOSES OF THE ORDINANCE; AND IF AN ARBITRARY AND IMPROPER CLASSIFICATION IS MADE, THE ORDINANCE CAN NOT BE SUSTAINED, AS A PERSON DISCRIMINATED AGAINST BY SUCH AN ORDINANCE IS DEPRIVED OF THE EQUAL PROTECTION OF THE LAW, AND SUFFERS THE DEPRIVATION OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW.

Cotting v. *Kansas City Stock Yards Company*, 183 U. S., 79.
Southern Railway Co. v. *Greene*, 216 U. S., 400.
Gulf, etc., Ry. Co. v. *Ellis*, 165 U. S., 150.
Raymond v. *Chicago Traction Co.*, 207 U. S., 20.
Connolly v. *Union Sewer Pipe Co.*, 184 U. S., 540.
People ex rel. Farrington v. *Mensching*, 187 N. Y., 8; 79 N. E., 884.
State v. *Mitchell*, 97 Me., 66; 53 Atl., 887.
State v. *Ashbrook*, 154 Mo., 375.
Chicago v. *Netcher*, 183 Ill., 104.
Bailey v. *The People*, 190 Ill., 28.
City of Los Angeles v. *Lankershim*, 160 Cal., 800; 118 Pac., 215.
Owen County v. *Cox*, 132 Ky., 738; 117 S. W., 296.
City v. *Wehrung*, 46 Ill., 392.
Wiggins Ferry Company v. *East St. Louis*, 102 Ill., 560.
Bessette v. *The People*, 193 Ill., 334.

Hibbard v. *Chicago*, 173 Ill., 91.
Monmouth v. *Popel*, 183 Ill., 634.
Zanone v. *Mound City*, 103 Ill., 552.
State v. *Sheriff*, 48 Minn., 236.
Lappin v. *District of Columbia*, 22 App. Cas. (D. C.), 68.
State v. *Shedroi*, 75 Vt., 277; 54 Atl., 1081.
Nichols v. *Walters*, 37 Minn., 264.

ARGUMENT.

WHILE CLASSIFICATION IS PERMISSIBLE IN AN ORDINANCE IMPOSING A LICENSE FEE EITHER FOR THE PURPOSES OF REGULATION OR REVENUE, THE DISTINCTIONS CREATED BY SUCH AN ORDINANCE MUST BEAR SOME REASONABLE AND JUST RELATION TO THE SUBJECT-MATTER OF THE CLASSIFICATION, AND TO THE PROPOSED PURPOSES OF THE ORDINANCE; AND IF AN ARBITRARY AND IMPROPER CLASSIFICATION IS MADE, THE ORDINANCE CAN NOT BE SUSTAINED, AS A PERSON DISCRIMINATED AGAINST BY SUCH AN ORDINANCE IS DEPRIVED OF THE EQUAL PROTECTION OF THE LAW, AND SUFFERS THE DEPRIVATION OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW.

Viewed from the standpoint of regulation and considering the allegations of the bill we find that the classification endeavored to be made in this ordinance, at most, results in a fee varying in inverse ratio to the amount of protection and regulation required.

We respectfully submit that a mere appeal to the general knowledge of the court would render unnecessary the minute statements of the bill of complaint in which it is shown that the large play houses, offering cheap seats to great masses of people, require more regulation and inspection than the small houses, charging higher prices and attracting audiences seeking a higher form of dramatic entertainment.

The bill shows, and it is a matter of general knowledge, that those theaters having large seating

capacities, which present the lighter forms of amusement, attracting audiences at two performances a day, seven days in the week, and fifty two weeks in the year, produce a much larger revenue than the smaller theaters open at most for six evenings and one matinee performance a week, and closed during the summer season.

The limits of judicial knowledge may reasonably extend to a recognition of the fact that the segregation of a few seats, not designated as box seats, at the price of one dollar or more, would not materially affect the earning capacity of a theater as compared with the earning capacity of a public hall where the more expensive seats are separated by a silk cord or brass railing from the balance of the floor, but in fact the bill, with what is probably an excess of caution, repeatedly and minutely sets forth the facts which render it plain that the classification provided by this ordinance results in the imposition of a fee entirely at variance with every reasonable classification along the line either of regulation or revenue. It shows that the highest price charged for a single admission to an entertainment, whether the attendance be large or small, bears no possible relation to the objects sought to be accomplished or that the City Council must have had in view, if the ordinance is to be supported.

Under the ordinance in question a theater owner whose theater has a thousand seats, and who charges $1.00 or more for any such seats, pays a $1,000 license fee. Under the same ordinance a theater having 2,000 seats, of which any number up to 2,000 are box seats, to which the price of admission may

be any price over $1.00, need only pay a $400 license fee, provided the price charged for all of the seats in the theater (other than box seats) is ninety-nine cents or less.

The exemption of box seats is an excrescence found only in the last amendment to the ordinance. The only possible reason for the insertion of this distinction which can be suggested, is that it was intended to favor the owner or owners of some particular theater so constructed that its higher priced seats either are sub-divided into boxes or can be so converted for the purpose of evading the higher tax imposed. As a matter of fact the bill alleges that such a condition does exist among certain theaters described and named in the bill. (Rec., 15.)

The ordinance in question, in the particulars above indicated, may well be compared to an ordinance which would provide that every hat store in a particular town which sells any hat for as much as two dollars shall pay a license fee of one thousand dollars, but if the highest priced hat sold in such store shall be sold for less than two dollars, then a license fee of but four hundred dollars shall be charged, but that in fixing a license fee the price charged for silk hats shall not be taken into account; or, an ordinance which provides that all clothing stores at which any suit of clothes is sold for a price as much as twenty dollars, shall pay a license fee of one thousand dollars, with a fee of four hundred dollars for clothing stores which do not offer for sale any suit costing as much as twenty dollars, but providing that silk lined suits shall not be taken into account in the computation.

The box seat provision is so grotesque that it perhaps tempts us to undue emphasis on that point.

We desire, however, to make plain our position that if the box seat provision were eliminated, the fixing of the tax upon the basis of the highest price charged for a single seat, without regard to the question either of gross or net revenue, opportunity for profit, value, capacity, demand for police or other protection, or other natural sources of classification, to which, as already pointed out, the highest price charged for any single seat bears no relation, would be equally indefensible.

While the courts in some cases strain the ordinary rules of law in the effort to support license enactments, we know of no case at all tending to support such a classification as is found in the ordinance in question.

In *Cotting* v. *Kansas City Stock Yards Company*, 183 U. S., 79 (1901), this court (opinion by Mr. Justice Brewer) held invalid a statute of the State of Kansas general in its terms, which for the purpose of regulating charges classified all stock yards into two classes based simply upon the volume of business transacted.

This court there referring to the business done by various stock yards, said that it could not be contended that a stock yards receiving 99 head of cattle per day was not doing the same business as one receiving 101 head of cattle per day, but that the business was the same "in all its essential elements."

So in the case at bar, the allegations of the bill show that complainants are doing precisely the same

business as their competitors in the City of Chicago who charge less than $1, as the highest price of admission, exclusive of box seats, but complainants, by reason of the fact that they charge more than $1 as the highest price of admission, exclusive of box seats, are compelled to pay annually a license fee two and a half times as great as such competitors.

Many other instances of invalid classification are cited by this court in the Cotting case quite analogous to the classification attempted in the present ordinance.

So in *Southern Railway Company* v. *Green*, 216 U. S., 400 (1910), where a revenue law of the State of Alabama, without referring to domestic corporations, imposed a tax upon foreign corporations, this court (opinion by Mr. Justice Harlan) held that as it was averred in the complaint (which was demurred to), it must be taken as admitted that there were other corporations of a domestic character in Alabama, carrying on a railroad business in precisely the same way as plaintiff, and that under that admitted allegation the tax was invalid, because the classification was based upon no real difference in situation.

In *Gulf, etc., R. R. Co.* v. *Ellis*, 165 U. S., 150 (1897), this court (opinion by Mr. Justice Brewer), held invalid a statute of the State of Texas, which provided that in a certain class of claims where the amount thereof did not exceed $50, railroad companies should be subjected to attorney's fees if their adversaries were successful, and laid down the doctrine, which has been so often quoted, that classifica-

tion must be based upon "some reasonable ground, some difference which bears a just and proper relation to the attempted classification."

In *Raymond* v. *Chicago Traction Co.*, 207 U. S., 20 (1907), this court (opinion by Mr. Justice Peckham) affirmed a decree enjoining the treasurer of Cook County, Illinois, from taking any proceedings looking towards the collection of certain taxes against the complainant, where it was shown that other corporations in the same situation as the complainant were not assessed in the same manner by the taxing officials of the state. This court there held that such an unjustifiable discrimination deprived the complainant of the equal protection of the laws.

In *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S., 540 (1902), where the Anti-trust Act of Illinois was declared unconstitutional because it expressly excepted agricultural associations from its operation, this court (opinion by Mr. Justice Harlan) again laid down the doctrine enunciated in *Gulf, etc., Railway Co.* v. *Ellis, supra,* and held that classifications either for taxation or police purposes could not be arbitrarily made if it was desired to avoid the inhibitions of the 14th amendment.

In *People ex rel. Farrington* v. *Mensching,* 187 N. Y., 8, 79 N. E., 884 (1907), the Court of Appeals of New York held invalid because of its unjust discrimination, a stock transfer law, which provided for the imposition of a tax on transfers of stock amounting to two cents on each share of $100 of face value or fraction thereof, because the tax was measured by the number of shares transferred regard-

less of the face or actual value thereof. The court reviews at length the question of classification for taxation purposes and held the statute before it invalid, because of its discriminatory treatment of cases involving the same circumstances. The court in its opinion cites many illustrations of cases where classifications for taxation purposes would be invalid, because, as the court says, they would be based upon "mere accident, whim or caprice." The opinion in the Mensching case asks whether only such members of a calling as have blue eyes or black hair could be taxed, or whether the sale of certificates printed on white paper could be taxed and those on yellow or brown exempted, or whether white horses could be taxed and all others exempted? The New York court states that the answer to these questions, and many others of the same character, is found in the decision of this court in *Cotting* v. *Kansas City Stockyards Co.*, 183 U. S., 79.

We think it is clearly apparent that the classification attempted in this ordinance is one of "mere accident, whim or caprice." The classification of theaters according to the price of admission charged for a single seat, but excluding box seats from the standard of classification is as whimsical as any of the illustrations cited by the New York Court of Appeals in the Mensching case. The court there said (at page 20 of 184 N. Y.) "there is no plausible or possible reason why 100 acres in a single field should not pay the same tax as 100 acres of equal value in 10 fields." So in the present case there is no plausible or possible reason why a theater owner should be taxed at a higher rate than his competitor simply

because he has selected a different plan of dividing his seats, although in all other respects (and this stands admitted of record) there is no other difference in their situation.

In *State* v. *Mitchell*, 97 Me., 66, 53 Atl., 887 (1902), the Supreme Court of Maine had to consider a statute of that state imposing a license fee upon peddlers, excepting, however, from the necessity of complying therewith, those residents of a town paying taxes of $25 or more upon their stock of trade. The court held that such a classification was arbitrary, as there was no reason why the resident with a smaller or less valuable stock of trade should have a tax imposed him which was not imposed upon his competitor with a larger or more valuable stock of trade.

In *State* v. *Ashbrook*, 154 Mo., 375, the Supreme Court of Missouri had before it a statute which imposed a license fee upon department stores, simply by reason of the fact that their stock of goods was more diversified than that of the ordinary dealer. The court held the statute invalid, because as it forcibly stated the legislature had no power to create "fiat" classes for purposes of taxation and the classification before it "was truly classification run wild." The court cites as instances of classification improper for taxation purposes, cases where the legislature might apply to revenue statute to merchants of a given avoirdupois or those employing clerks of a designated stature or *doing business in buildings of a special architectural design.*

A somewhat analogous case to *State* v. *Ashbrook*

is *Chicago* v. *Netcher*, 183 Ill., 104 (1889), where the court passed upon an ordinance whereby the City of Chicago was attempting to establish a classification in connection with the right to sell bottled liquors by which department stores were accorded different treatment from that given to other mercantile establishments. The Supreme Court of Illinois held the ordinance invalid because the classification had no proper and just relation to bottled liquors.

There is much more reason and basis for classifying stores into department stores and others than for classifying theaters solely on the basis of the price charged for seats, other than box seats.

In *Bailey* v. *People*, 190 Ill., 28 (1901), the court had before it a statute of the State of Illinois providing that only a certain number of persons could occupy the same room for sleeping purposes at the same time in lodging houses in a city of 100,000 inhabitants, or more, and fixing the number of cubic feet of space such a room must embrace for each person sleeping therein. The statute, however, did not purport to affect boarding houses, inns, hotels or taverns. The court held the statute invalid, because it discriminated against one class in the transaction of a business of a lawful occupation and left unaffected other persons engaged in acquiring property in a manner not distinguishable in character.

It can scarcely be claimed that an ordinance which imposes upon persons acquiring property by the transaction of a lawful business the payment of a fee two and one-half times as great as

that imposed upon "other persons or classes engaged in acquiring property in a manner not distinguishable from that employed by those discriminated against," is less obnoxious to the Fourteenth Amendment than if the favored class had been altogether exempt from the payment of any fee.

In *City of Los Angeles* v. *Lankershim*, 160 Cal., 800, 118 Pac., 215 (1911), the court held invalid an ordinance of Los Angeles, which imposed a license fee upon persons conducting and maintaining buildings of more than thirty rooms for renting purposes, at the rate of one dollar per year for each office room and three dollars per year for each store room contained in such buildings. As will be seen the ordinance before the court did not operate in cases where the building contained less than thirty rooms. The court held the contention was purely fanciful, that a class line might be drawn at thirty rooms and that those who rented thirty rooms and over be declared to be following one occupation and those renting less than thirty rooms another occupation. The court said that if such a distinction were not arbitrary those who had less than thirty rooms to rent might by another ordinance be taxed and those renting more than thirty rooms left unaffected; an illustration which exemplified the vice of the ordinance before it, as it clearly showed that the ordinance imposed upon a part of a class artificially created a burden not imposed upon all who stood in the same relation to the same subject matter.

In *Owen County* v. *Cox*, 132 Ky., 738, 117 S. W., 296, where the Supreme Court of Kentucky recognized the right to classify a vehicle tax by the number

of horses used, that court nevertheless condemned as unconstitutional a licence ordinance which imposed a tax of $75 upon three-horse wagons and $200 upon four-horse wagons because of the manifest disproportion in taxation between the classes thus defined. The court held that the fact that the ordinance bore alike upon all owners of four-horse wagons was not sufficient to make it valid because the class of persons whose occupations were taxed were those who ran vehicles for hire and the taxing power could not unjustly discriminate between the classes it created.

It is obvious that the classification under the provisions of the ordinance here in question which imposes upon the owner of a theater charging $1 for its highest priced seat two and a half times the tax imposed upon his neighbor charging but 99 cents for his seats, even though in all other respects the businesses of the two are carried on in the same identical manner and even though the gross and net revenue, cost of inspection, opportunity for profit and the like have no relation whatever to such classification, is manifestly subject to the vice so clearly pointed out in the cases above cited.

Many other cases are cited herein under our brief point and these cases uniformly hold that no classification can be sustained that does not bear a distinct and proper relation to the object sought to be accomplished, or which imposes upon any person pursuing a lawful occupation any greater burden than is imposed on other persons pursuing the same occupation unless some distinction is found which

permits of a classification founded upon some reason.

The Supreme Court of Illinois in its opinion in this case did not attempt in any way to point out a distinction upon which the classification made by the ordinance here attacked could be sustained. The sum and substance of the reasoning of the Supreme Court may be found in the following expression (246 Ill., 20, 25, Rec., 57):

> "Under this ordinance every person desiring to give an entertainment is left free to fix the charge of admission as he sees fit. He may thus elect into which class he desires to be placed. Presumably each person will select the class which will best promote his interests."

We respectfully submit that it is sufficient answer to this claim to say that it is not within the power of a municipality or state to compel citizens to resort to subterfuges or abandon the rightful exercise of a free judgment in business matters in order to escape the arbitrary and unjust imposition of a discriminatory tax. If a tax were sought to be imposed upon men having red hair, it would be no justification of the act to refer the objecting complainant to the possibility of the use of a hair eradicator or a walnut dye. If an unjust discrimination is made against a department store, it is no answer to say that the merchant should engage exclusively in the hardware business. The discriminatory taxation of the owner of an office building containing thirty rooms cannot be justified by a claim that he can avoid the tax by reducing the number of his rooms.

Neither is this case analogous to *Quong Wong* v.

Kirkendall, 223 U. S., 59. In that case this court had before it a law of the State of Montana which imposed a license fee upon all persons engaged in the laundry business with a proviso that it should not apply to women so engaged where not more than two women were employed. This court held that the law might favor women as against men in industrial matters and that it could not say there was not such a reasonable distinction between hand laundries and steam laundries that the state, if it thought its policy best subserved thereby, could not by an adjustment of taxes according to the "instrumentalities" used, discourage the one and encourage the other. In the case at bar we think we have shown by the allegations of the bill, which on the face of the record stand admitted, that there is no reasonable or actual difference at the bottom of the classification of theaters made by the ordinance here involved and that the ordinance puts a different imposition upon two persons pursuing the same calling under identical circumstances and with the same "instrumentalities."

The correct lines along which classification can be made in cases like the one at bar, are indicated by this court in the case of *Toyata* v. *Hawaii*, 226 U. S., 184 (decided December 2, 1912; opinion by Mr. Justice Hughes). This court there had under consideration a law of the territory of Hawaii, which imposed a tax of $600 on auctioneers following their vocation in the District of Honolulu, and a tax of $15 on auctioneers of other taxing districts.

This court held that law valid, but in so doing said (191-192):

"It cannot be said, however, that there was no *reasonable basis* for a distinction between Honolulu and other districts. And it was the province of the legislature to decide upon the amount of the fees which should be charged. It must be assumed that in so deciding it took into account varying conditions in the respective localities, *as, for example, in the amount of business transacted and in the corresponding value of such licenses.* * * * With its intimate knowledge of local conditions, the Supreme Court of the Territory said upon this point: *'The great bulk of the business of the Territory is done in Honolulu.* It is not for us to say whether we would make the difference in the amount of license fees in this case as large as the legislature has made it. It is sufficient that we cannot say that the difference is unreasonable or that the statute is unequal or arbitrary in its operation.' We find no ground for a different conclusion."

The bill in this case, however, shows, by specific allegations, and these allegations stand admitted of record, that the highest price of admission to a single seat in the theaters of Chicago, bears no relation to "the amount of business transacted" or to the "bulk of business" done.

And it may be noted that it did not occur to this court in deciding *Toyata* v. *Hawaii, supra,* that it might sustain the law there involved upon the theory advanced by the Supreme Court of Illinois in deciding the present case, viz.: that an auctioneer of Hawaii who did not desire to pay the license fee imposed on him, had the privilege of moving to a district where the taxing fee was smaller.

We respectfully urge that the ordinance here in question comes squarely within the inhibitions of the

Fourteenth Amendment to the Federal ~~Statute~~ Constitution, and that the judgment of the Supreme Court of Illinois should be reversed.

Respectfully submitted,

LEVY MAYER,
ALFRED S. AUSTRIAN,
Attorneys for Plaintiffs in Error.

6

SUP. COURT, U. S.
FILED.
JAN 30 1913
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1912.

No. 181.

METROPOLIS THEATRE COMPANY et al.,
Plaintiffs in Error.

vs.

CITY OF CHICAGO et al., Defendants in Error.

Brief and Argument for Defendants in Error.

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Corporation Counsel,
Attorney for Defendants in Error.

CHAMPLIN LAW PRINTING CO.

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Supreme Court of the United States

OCTOBER TERM, A. D. 1912.

No. 181.

METROPOLIS THEATRE COMPANY et al.,
Plaintiffs in Error.

vs.

CITY OF CHICAGO et al., Defendants in Error.

Brief and Argument for Defendants in Error.

MAY IT PLEASE THE COURT:

As it is stated by counsel for plaintiffs in error, the question involved in this proceeding is whether or not the Fourteenth Amendment to the Federal Constitution is violated by an ordinance imposing graduated license fees upon entertainments based upon the highest price of admission to the entertainment exclusive of that charged for box seats. It will, therefore, be seen that but a single question presents itself for the consideration of this court, and that is whether the classification is purely arbitrary or whether in the language of this court in *Heath* v. *Worst,* 207 U. S. 338, that the classification has a relation to the purpose of the council enacting it.

BRIEF.

I.

THE ORDINANCE IN QUESTION CREATES A REASONABLE CLASSIFICATION AND DOES NOT VIOLATE THE FEDERAL CONSTITUTION BY DEPRIVING THE COMPLAINANTS OF THE EQUAL PROTECTION OF THE LAW OR CAUSING THEM TO SUFFER THE DEPRIVATION OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW.

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Danville v. *Weaver*, 17 Pa. Co. Ct. 17.
State v. *Webber*, 214 Mo. 272.
People v. *Smith*, 147 Mich. 391.
City of Chicago v. *Brownell*, 146 Ill. 64.
Quong Wing v. *Kirkendall*, 223 U. S. 59.

II.

THERE IS NO PROVISION IN THE FEDERAL CONSTITUTION WHICH FORBIDS UNEQUAL TAXATION BY THE STATES.

Davidson v. *New Orleans*, 96 U. S. 97, 106.
Bells Gap v. *Pennsylvania*, 134 U. S. 232.
Pacific, etc. v. *Seibert*, 142 U. S. 339, 351.
Merchants v. *Pennsylvania, etc.*, 167 U. S. 461.
Coulter v. *Louisville*, 196 U. S. 599.
Savanah v. *Savanah*, 198 U. S. 392.
Metropolitan v. *New York*, 199 U. S. 1.
St. Louis v. *Davis*, 132 Fed. 629, 33.

ARGUMENT.

THE ORDINANCE IN QUESTION CREATES A REASONABLE CLASSIFICATION AND DOES NOT VIOLATE THE FEDERAL CONSTITUTION BY DEPRIVING THE COMPLAINANTS OF THE EQUAL PROTECTION OF THE LAW OR CAUSING THEM TO SUFFER THE DEPRIVATION OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW.

The ordinance in question is passed by the city council pursuant to a power conferred upon it by the state legislature, (Clause 41, section 62, chapter 24, Hurd's Revised Statutes):

> "To license, tax, regulate, suppress and prohibit hawkers, peddlers, pawnbrokers, keepers of ordinaries, theatricals and other exhibitions, shows and amusements and to revoke such license at pleasure."

And the Supreme Court of Illinois in its decision of this case (246 Ill. 20), held that the ordinance in question was an exercise of power conferred by clause 41 aforesaid.

And the Supreme Court also held in the case last aforesaid, at page 24, that

> "The power given to cities and villages to tax and regulate theatricals and other exhibitions, shows and amusements carries with it the power to classify the subjects and to fix a definite license fee in each class."

The state Supreme Court then quotes approvingly from the decision of this court in *Heath* v. *Worst*, 207 U. S. 338, and says:

> "Classification of subjects for taxation may not be made arbitrarily, but necessarily there must be great freedom of discretion, even though it result in ill-advised, unequal and oppressive legislation."

The court then continues at page 25:

> "A classification will be sustained when it is based on a reasonable difference of situations and conditions."
>
> *Bessette* v. *People*, 193 Ill. 334.
>
> *Douglas* v. *People*, 225 Ill. 536.
>
> "The classification of theatricals made by the ordinance in question is based upon a difference of a charge of admission.
>
> "Under this ordinance every person desiring to give an entertainment is left free to fix the charge of admission as he sees fit. He may thus select into which class he desires to be placed. Presumably each person will select the class that will best promote his interest. It may be possible that this basis of classification is not the most equitable that could be devised, but, as was said by the United States Supreme Court in *State Railroad Tax Case*, 92 U. S. 575: 'Perfect uniformity of taxation as regards individuals and corporations, or the different classes of property subject to taxation is a dream unrealized.'"

And the court at page 24 of its opinion, further says:

> "The bill in this case alleges that the additional expense to the city for inspection, police supervision, etc., does not exceed $50 for each theatre per annum, and it is strenuously argued

that the ordinance is unreasonable because the license fees are arbitrary and excessive. If the ordinance had been passed under the power merely to regulate theatres this argument would be entitled to serious consideration. But such is not the case here. The ordinance may be sustainable under the taxing power alone, without reference to its reasonableness as a regulatory measure."

It seems that the Supreme Court of the State of Illinois endeavored to adhere to the decision of this court in *Heath* v. *Worst*, 207 U. S. 338, in which your Honors say (p. 354):

"We have declared many times, and illustrated the declaration, that classification must have relation to the purpose of the legislature. But logical appropriateness of the inclusion or exclusion of objects or persons is not required. A classification may not be merely arbitrary, but necessarily there must be great freedom of discretion, even though it result in ill-advised, unequal and oppressive legislation. *Mobile Co.* v. *Kimball*, 102 U. S. 691. And this necessarily on account of the complex problems which are presented to government. Evils must be met as they arise and according to the manner in which they arise. The right remedy may not always be apparent. Any interference, indeed, may be asserted to be evil, may result in evil. At any rate, exact wisdom and nice adaptation of remedies are not required by the fourteenth amendment, nor the crudeness nor the impolicy nor even the injustice of state laws redressed by it. * * *

"But be this as it may, there is a distinction between the paints, and the evils to which the statute was addressed may not exist or be as flagrant in one as in the other. There, indeed, may be a degree of competition between them,

but other circumstances and conditions may have directed the legislative discretion. This record certainly does not present any data to make it certain that the discretion was arbitrarily exercised. Legislation which regulates business may well make distinctions depend upon the degrees of evil without being arbitrary or unreasonable. * * *

"But a problem of a different kind was presented to the legislature of North Dakota. It was not what scientific men might find out by chemical and laboratory tests, or progressive men might discover by practical experiments, but what the people of the state could find out or be justified in accepting as established. It was the experience of the people, not the acts of some progressive manufacturers, which directed the legislation, and it was to protect the people, when following the opinions formed from that experience, from deception, that the statute was enacted. It may be that the purpose could have been accomplished better in some other way. It may be that it would have been more entirely adequate, let us say, even more entirely just, to have required that all paint should be labeled, the statute nevertheless cannot be brought under the condemnation of the fourteenth amendment. Legislatures, as we have seen, have the constitutional power to make unwise classifications. But we may be going too far in concession to the argument of appellants. The legislature of North Dakota may have met the evils which exist as best it could, and there is a strong presumption that it did. At any rate, a fair question was presented, whether to take as a standard the ingredients that years of use had demonstrated as excellent or make regulation universal. We think it would be limiting the power of the state too much to say that a judgment exercised under such circumstances must be condemned

> as denying the equal protection of the laws or that the liberty assured by the Constitution of the United States in the fourteenth amendment gives a right to either progressive or conservative tendencies in legislation."

While the legislature of North Dakota on the one hand was exercising the power to regulate and the council of the City of Chicago on the other hand was exercising the power to raise revenue by means of exacting license fees, nevertheless, each of those bodies had before it in a sense the same question, that of classification, and what your Honors said in speaking of the North Dakota statute may be applied perhaps with slight modification for the purposes of adaptation to the ordinance in question, and it may be that the purpose of the council in making the classification embodied in the ordinance could have been accomplished better in some other way. It may be that it would have been more entirely adequate, let us say, even more entirely just to have made a classification founded on a different basis. The ordinance, nevertheless, cannot be brought under the condemnation of the fourteenth amendment. City councils have constitutional power to make unwise classification. The city council may have met the questions which existed as best it could and there is a strong presumption that it did. At any rate a fair question was presented whether to take as a standard of classification the amount of the admission fee charged or make a license universal. We think it would be limiting the power of the city council too much to say that a judgment exercised under such circumstances

must be condemned as denying the equal protection of the laws or that the liberty assured by the Constitution of the United States in the fourteenth amendment gives a right to either progressive or conservative tendencies in legislation. (With apologies for the plagiarism.)

With the rule laid down by your Honors in *Heath* v. *Worst* as a guide, let us then measure the ordinance in question by that rule which we find to be: Classification must have relation to the purpose of the legislature but logical appropriateness of the inclusion or exclusion of the object or persons is not required. A classification may not be merely arbitrary but necessarily there must be great freedom of discretion, even though it result in ill-advised, unequal and oppressive legislation.

With the foregoing rule as a guide, let us determine whether or not the classification made has a relation to the purpose of the legislature. If it has, it is valid through logical appropriateness of the inclusion or exclusion of objects or persons is not required. And the ordinance must be sustained even though it result in ill-advised, unequal and oppressive legislation.

It must be borne in mind, first of all, that the license fee is imposed upon the amusement to be given and not upon the place where it is to be given, and it would seem only fair and reasonable that a person who is giving an entertainment the price for admission to which is $2, might with perfect propriety be required to pay a much larger license fee than a person who is about to give an entertainment

the price for admission to which is but half that amount, and we submit that there is a rational difference of situation or condition between an amusement the admission fee to which is $2 and an amusement the admission fee to which is $1.

Every person is left free to place the admission fee at what he may see fit, and he is also left free to give the entertainment at such place as he may see fit, provided, only, that the place in which the entertainment is to be given is one that complies with the building ordinances. And we, therefore, submit that all of the allegations contained in the bill of complaint as to the seating capacity of the various theatres owned by the various complainants are wholly irrelevant and immaterial.

We invite your Honors' attention in this connection to *Wehrung* v. *City*, 46 Ill. 392-394, wherein the court says

> "But an ordinance which merely discriminates between different localities in a city, according to the advantages they may present for the business for which license is sought, leaving all persons at equal liberty to apply for license in whatever locality they think proper, and making no distinction between persons, but between places only, is open to no objection. Such an ordinance would be founded on the self-evident fact that a business may be conducted with much more profit in some streets of a town than in others, and the privilege, therefore, more valuable."

If one of the complainants desires to give an entertainment and to charge an admission fee of $1.50, the fact that he commits an error of judgment in

selecting a place in which to give that entertainment which has a seating capacity of 800 instead of selecting another place which has a seating capacity of 1,800, is in nowise chargeable to the ordinance in question or the city council which passed it. Nor is there anything in the ordinance in question that in any way attempts to regulate the price that may be charged for admission by the owner of a theatre who desires to give an entertainment in the building owned by him. So, if a person who is the owner of a theatre having a seating capacity of 800 desires to give an entertainment therein and does not wish to pay a license fee of more than $400, he may make the price charged for admission any sum less than $1. If, on the other hand, the owner of a place having a seating capacity of 800 desires to give entertainments therein and considers that it is a good business proposition to charge $2 for admission to such entertainments, he is free to do so and all that is required of him is that he pay a license fee commensurate with the price of admission to be charged by him.

Furthermore, there is nothing in this ordinance that prevents a man from constructing or enlarging a building to any seating capacity that he may see fit.

It is not contended that the ordinance in question was passed for the purpose of furnishing business sagacity to the complainants herein, and we, therefore, fail to see wherein the fact that a certain entertainment is given by one of the complainants in a place having a seating capacity of 800 at an admission fee of $1.50, whereas the same entertain-

ment is given by another person in a different place having a seating capacity of 1,800, and an admission fee of $1.50 charged thereto, renders the ordinance either unreasonable or unconstitutional, but the difference in results above referred to should be charged to a lack of judgment rather than to the ordinance.

Counsel may make a point in this court and made a point in the state courts of the allegation contained in the bill to the effect that some of the complainants give entertainments for fifty-two weeks out of the year, whereas others give entertainments or a much less period, but it will be noted that the ordinance in question permits persons receiving a license to give such entertainments every day in the year and as many times per day as they see fit. We fail to see where there is any distinction in this regard between the license in question and a saloon license requiring the payment of an annual fee, irrespective of the length of time that the saloon is conducted, which this court has repeatedly held to be valid. The fact that a particular person sees fit to avail himself of the privilege conferred by the ordinance to give entertainments throughout the entire year, whereas another person, although he has conferred upon him by his license the same privileges, does not see fit to avail himself of them, should be charged to his own conduct and not to the ordinance.

We submit, therefore, that the situation, shorn of all irrelevant and immaterial matters, is that the ordinance selects as the basis for classification a condition over which the person applying for a

license has absolute control, viz., the price of admission. The applicant is conversant with all of the conditions that he must encounter in giving the entertainment in question; he has determined the place where he proposes to give the entertainment, and knowing in every particular the position in which he is placed—as the city council does not and can not know—the applicant for the license determines whether or not under all the circumstances with which he is thoroughly conversant, he will charge $1.50 for admission to the entertainment and in turn pay a $1,000 license fee or charge 75 cents as the price of the admission to the entertainment and pay a $400 license fee.

The bases for classification are elements as numerous as the classifications themselves, and from our examination of the authorities, it seems to us that in many instances classifications which have been sustained by courts of last resort are based upon a far less rational difference of situation than is found to exist under the circumstances involved in this case.

It is argued by counsel that drawing the line for the purpose of classification at one dollar is purely arbitrary. In a sense it is and in another sense it is not. But when we consider that the price of theater tickets is generally gauged in the terms of dollars, half dollars and quarters, a reason for the selection immediately becomes apparent.

If there were theaters charging a dollar for tickets and others charging ninety-nine cents and

the ordinance should provide that those charging a dollar or more should pay a license fee of one thousand dollars and those charging less than a dollar, *i. e.*, ninety-nine cents, should pay four hundred dollars, there would be some basis for the argument, if in fact, it appeared that tickets were being sold at ninety-nine cents, but it does not appear that any tickets are sold at ninety-nine cents.

Throughout most every state in the union, if not in every state in the union, it is provided that only male persons of the age of twenty-one years or upwards may vote, thereby excluding persons who are twenty years, eleven months and twenty-nine days old. And it is frequently provided that before any person of lawful age may vote they must reside in the state one full year, thereby excluding from the right of franchise persons otherwise qualified who have resided in the state for eleven months and twenty-nine days, but no court has ever held these laws to be in violation of the constitution. On the other hand, they recognize the fact that there must be a dividing line somewhere whenever a classification is made.

The classification in question may not be the very embodiment of wisdom nor is it required to be. All that is required is that it shall not be purely arbitrary and we submit that it is not in fact arbitrary, but that it has a relation to the purpose of the legislative body, and that is all that is required of it.

A REVIEW OF SOME OF THE CASES ON CLASSIFICATION.

Inasmuch as the chief complaint made by the bill is that there are inequalities in the results of the application of the ordinance in question, it will be of interest to note the comments of the court in *Travellers Insurance Company* v. *Connecticut,* 185 U. S. 364, wherein the court at page 371 says:

> "This court has frequently held that mere inequality in results of a state tax law is not sufficient to invalidate it. Thus, in *Tappan* v. *Merchants, etc.,* 19 Wall. 504, it was said:
>
> "'Absolute equality in taxation can never be obtained. That system is the best which comes the nearest to it. The same rules cannot be applied to the listing and valuation of all kinds of property.'
>
> "Again in *State Railroad Tax Cases,* 92 U. S. 575, 612:
>
> "'Perfect equality and perfect uniformity of taxation as regards individuals or corporations, or the different classes of property subject to taxation, is a dream unrealized. It may be admitted that the system which most nearly attains this is the best. But the most complete system which can be devised must, when we consider the immense variety of subjects which it necessarily embraces, be imperfect. And when we come to its application to the property of all the citizens, and of those who are not citizens, in all the localities in a large state like Illinois, the application being made by men whose judgments and opinions must vary as they are affected by all the circumstances brought to bear upon each individual, the result must inevitably partake largely of the imperfection of human nature and of the evidence on which human judgment is founded.'"

In *Kochersperger* v. *Drake,* 167 Ill. 122, the court at page 127, in referring to the inheritance tax statute, says:

> "That statute provides certain classes of property which were a part of an estate, shall be exempt from taxation under these provisions, and when the legislature provides other classes of property, some of which shall pay one dollar per hundred, others two, other three and others four, and still others five, and again others six dollars per hundred, six different classes are created, under and by which a tax is levied by valuation on the right of succession to a separate class of property. The class on which a tax is thus levied is general and uniform, and pertains to all species of property included within that class. A tax which affects the property within a specific class is uniform as to that class, and there is no provision of the constitution which precludes legislative action from assessing a tax on that particular class. By this act of the legislature six classes of property are created heretofore absolutely unknown. It is those classes of property depending upon the estate owned by one dying possessed thereof which the state may regulate as to its descent and the right to devise. The tax assessed on classes thus created is absolutely uniform on the classes upon which it operates, and under the provisions of the statute is to be determined by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property inherited, and is not inconsistent with the principle of taxation fixed by the constitution, and is clearly within the sections of the constitution quoted."

Speaking on the subject of succession, at page 128, the court says:

> "The broad principle presented is, that the legislature may create new classes of property with reference to estates, under which they may regulate the right to inherit or devise and take under devise, and such right existing, such classes may be created, and as created may be uniform and the assessment by valuation, when declared to operate equally on the right of succession to such classes, is not a violation of the provisions of the sections of article 9 of the constitution of the State of Illinois."

Counsel for complainants contended in the trial court, among other things, that the ordinance in question is vicious because it imposes a license fee of $1,000 upon a person charging the maximum price of admission, irrespective of the seating capacity of the theater in which the entertainment is given; in other words, irrespective of the amount of business done under the license. This same question arose in *Banta* v. *City,* 172 Ill. 219, and in speaking on the subject the court at page 221 said:

> "The ordinance under consideration levies a license fee upon each person pursuing the occupation of a broker, and requires that all such persons shall pay a uniform fee, without regard to the amount or value of the business transacted by the said brokers, or the capital they have, if any, invested in the business. The argument therefore, is, the ordinance is not uniform in respect to persons and property, and for that reason is in contravention of said latter section of the constitution. We think said section 9 has reference only to taxes

to be collected by assessments upon assessible property. * * * The ordinance under consideration excuses no one of the class upon which it operates from the payment of the license fee, but exacts a uniform fee from each person in said class. It is uniform in respect to the persons affected, and more is not required by the constitution."

In *Marmet* v. *The State*, 45 O. St. 63, at page 69, the court says:

"It is urged, too, that the last clause of section 29 makes discriminations in favor of farmers marketing the products of their own farms, which are unjust, and that this invalidates the law. Such products ordinarily embrace the necessaries of life, without which the people, and, to some extent, domestic animals could not subsist, and it is not unfair to assume that this consideration had weight with the legislature in making the discriminations referred to. Other reasons may have been within the knowledge of that body which are not here disclosed, and do not occur to us. However, it is enough to say, that it is not shown that such discriminations are not within the legislative discretion. It may be added that absolute equality as to burdens, whether applied to taxes or other subjects of legislation, is not to be expected in our laws. The wisdom of man has not yet devised a system of equalizing burdens so perfect in its application and so thorough in its enforcement as to leave no room for adverse comment or criticism."

In discussing the subject of licensing, the court further says at page 70:

"Whether the authority to enact laws of the character of the one in question shall be re-

> garded as based upon the police power of the government, or upon the taxing power, is, perhaps, not of the greatest importance, provided the power is found to exist. We have the best of authority for the oft repeated aphorism that 'there is no magic in names.'"

In this connection we invite the attention of the court to clause 41 of section 63 which provides that cities shall have authority:

> "To license, tax, regulate, suppress and prohibit * * * theatricals and other exhibitions, shows and amusements and to revoke such license at pleasure."

In re Abel, 10 Idaho, 288, a statute requiring a license of peddlers of books and other merchandise, but exempting those dealing in farm products, was held valid.

In *State* v. *Montgomery,* 92 Me. 433, a statute requiring a license from peddlers of articles except fruit, fruit trees, provisions, live animals, brooms, agricultural implements, fuel, newspapers, books, pamphlets and agricultural products, was held not unconstitutional because of the exemption of these articles, since it was within the legislative discretion to say what goods might not be peddled without a license.

In *Ex parte Mosler,* 8 Ohio C. C. 324, a statute requiring a license from itinerant vendors of wearing apparel was held not a violation of the constitution because it assumed to regulate only vendors of one particular kind of goods.

In *St. Louis* v. *Bowler,* 94 Mo. 630, it was held that an ordinance imposing a license upon agents and canvassers for sewing machines was not repugnant to the constitutional provision requiring uniformity as to the same class of subjects, since here there was no discrimination between sewing machine agents.

In *Ex parte Butin,* 28 Tex. App. 304, an act providing for a license from peddlers of clocks, cooking stoves or ranges, was held not a violation of the constitutional provision, and uniform.

In *Needham* v. *State,* 51 Tex. Crim. Rep. 248, a statute providing for a tax upon persons peddling patent medicines exempting other peddlers was upheld.

In *Warren* v. *Geer,* 117 Pa. 207, an ordinance fixing different license fees for the following classes was held constitutional: canvassers of books and pictures; peddlers of grapes, meats, shirts, furnishing goods, fish, furnishings, wagons, carriages and sleighs.

In *Ex parte Heylman,* 92 Cal. 482, an ordinance providing for a greater license fee from peddlers of meat than from those selling fish, vegetables, fruit, game and poultry, and other commodities, was held valid.

In *Mechanicsburg* v. *Koons,* 18 Pa. Sup. Ct. 131, an ordinance was held not class legislation because a different license fee was required from canvass-

ers of teas and coffees than from canvassers of fish, or because a still different rate was fixed for canvassers of books.

Unreasonableness cannot be determined from single person.

Nashville, etc. v. *City,* 118 Ala. 362.

$400 on mechants using trading stamps and $24 on those who do not, held not to discriminate.

Gamble v. *City,* 147 Ala. 682.

$8 on boarding house if meal not cooked and served by owner or member of family, and $3 if it is, held not discrimination.

Ex parte Lemon, 143 Calif. 558.

License on milk dealer with over five cows, exempting others, valid.

State v. *McKinney,* 29 Mont. 375.

Smaller fee on wholesalers than on retailer doing same amount of business, held uniform as to class.

Com. v. *Clark,* 195 Pa. St. 634; 57 L. R. A. 348.

Trades and professions may be divided into classes and license imposed as to each class.

Sworn v. *Selser,* 106 La. 691.

Requiring money lenders other than banks to take out license, held not to discriminate.

Cowart v. *City,* 67 S. C. 35.

Dividing fishermen into three classes based on the depth of the water in which they fish, held proper classification.

Morgan v. *Com.*, 98 Va. 812.

In absence of evidence as to reasonableness of charge, it is presumed reasonable.

City v. *Newell*, 115 Ia. 55.

The classification made for the purpose of a license tax may be based upon the average amount of the stock.

Newton v. *Atchison*, 31 Kas. 131.

The classification may be based upon the number of persons employed.

Ex parte Sisto Li Protti, 68 Cal. 636.

A municipal requirement under a power to establish and regulate market houses and to license and regulate fresh meat stores, establishing market houses and requiring persons selling therein to pay rent but no license, and that persons keeping meat stores shall pay a license of $100 and forbidding them to sell game, fish, vegetables, and other articles of merchandise, and requiring a license of $50 from keepers of game or fish shops, is a mere classification of dealers with a license differing in amount, and properly graduated.

Voss v. *Memphis*, 9 Lea, 294.

A license on livery stables may be in proportion to the number of horses kept for hire.

Howland v. *Chicago*, 108 Ill. 500.

A vehicle tax may be based on the character of the individual vehicle in connection with the number of horses used in drawing the respective vehicles.

Smith v. *Louisville,* 6 S. W. 911.

Fee charged for a building permit may be based upon the estimated cost of the building.

St. Paul v. *Dow,* 37 Minn. 20.

A hotel license tax may be based upon the number of rooms in the hotel.

St. Louis v. *Bircher,* 7 Mo. App. 169.

A license tax on vehicles, graduated at $5 on those drawn by one horse, and $8 on those drawn by two horses, and $12 on those drawn by three or more, is reasonable and valid.

Gibson v. *Corapolis,* 22 Pittsburgh L. J. (N. S.), 64.

An annual license fee imposed upon artists may be based upon the population of the town in which artist resides.

State v. *Schlier,* 3 Heisk. 281; 8 Heisk, 455.

In *State* v. *Schoenhausen,* 37 La. Ann. 42, a one thousand dollar tax for keeping a concert, dancing and variety performance was held valid.

One license fee may be charged for selling liquor at a wayside inn and another for carrying on the same business in a village or town.

Amader v. *Kennedy,* 70 Cal. 458.

An $80 annual license for druggists having permits to sell liquor, and $5 for those not having permits, held valid.

Tulloss v. *Sedan*, 31 Kas. 165.

If the legislative body is given authority to graduate the amount of license taxes, and no standard is fixed, the method is left for the legislative body to determine.

State v. *Traders, etc.*, 41 La. Ann. 329.
New Orleans v. *Ponchartrain*, 41 La. Ann. 519.
State v. *Liverpool*, 40 La. Ann. 519.

License tax may be based on amount of premiums collected.

State v. *Liverpool*, 40 La. Ann. 463.

And the fact that the license law requires smaller insurance companies to pay a larger tax in proportion to their premiums than larger companies, does not render it unconstitutional.

Same case.

License tax may be based upon the amount of profits.

Ficklin v. *Shelby*, 145 U. S. 1.
Ex parte Mount, 66 Cal. 448.
Walker v. *Springfield*, 94 Ill. 364.

If a power be granted with a view to revenue, the amount of the tax, if not limited by charter, is left to the discretion and judgment of the municipal authorities.

State v. *Hoboken*, 41 N. J. L. 71.

The taxing power knows no limit except the necessities of the public treasury and the discretion of the taxing power, and the amount of a license tax imposed for the purpose of a revenue does not prove its invalidity.

Frettwell v. *Troy,* 18 Kas. 271.
St. Joseph v. *Ernst,* 95 Mo. 360.
Harder's, etc. v. *City,* 235 Ill. 58.

License fee for $2 on hand carts, three on buggies and so on for vehicles of different character, and $30 on 6 horse omnibus, held valid.

St. Louis v. *Green,* 70 Mo. App. 468.

$85 for a license to sell liquor on land and $50 to sell liquor on boats, held valid.

Kiliski v. *Grady,* 25 La. Ann. 576.
State v. *Rolle,* 30 La. Ann. 991.

License tax based on amount of monthly sales held valid.

Sacramento v. *Crocker,* 16 Cal. 119.

License fee of from $3 to $25 based on character of vehicles, held not void for want of uniformity.

Smith v. *Louisville,* 6 S. W. 911.

License fee on persons selling in private market valid, although no fee exacted from those selling in public market.

New Orleans v. *Du Barry,* 30 La. Ann. 481.

Ordinance may exact a smaller fee for a month than is exacted for the same period on a weekly basis.

Webber v. *Chicago,* 50 Ill. 110; 48 Ill. 313.

Considerable latitude will be allowed for the exercise of legislative discretion.

Littlefield v. *State*, 42 Neb. 223; 28 L. R. A. 588.

In *McGrath* v. *Newton*, 29 Kas. 364, it was held that owing to a mis-joinder of parties having no community of interest, a proceeding to question the legality of a license tax could not be maintained.

License on those who sell articles not of their own production—exempting others held valid.

Com. v. *Rearick*, 203 U. S. 507.

Rosenbloom v. *State*, 64 Neb. 342.

License on dealers in trading stamps held valid.

Homes v. *Ft. Smith*, 93 F. 857.

Classification will not be interfered with unless unreasonable and arbitrary.

City v. *Clark*, 124 Ga. 254.

Tax on vehicles used in transporting persons for hire but not on livery rigs upheld.

City v. *Balton*, 128 Ia. 108.

Tax on insurance companies exempting mutuals held valid.

Iowa v. *Gilbertson*, 129 Ia. 508.

Uniformity in imposition of licenses impracticable.

State v. *Hammond*, 110 La. 180.

$75 to peddle from one horse cart and $50 from two horse cart, held valid.

People v. *Hotchkiss*, 118 Mich. 59.

Harshness of law does not affect its validity.

In re Lipschitz, 14 N. D. 622.

Classification of lodging houses held valid.

180 Pa. St. 47.

License for sale of goods exempting manufacturer, held valid.

Com. v. *Clark,* 57 L. R. A. 348.

A classification for the purpose of imposing license fees may be based upon the location on different streets in the city.

Wehrung v. *East St. Louis,* 46 Ill. 392.

License fees exacted by the state may be based upon the population of the various municipalities, irrespective of the amount of business transacted by the person paying the license fee.

State v. *Doherty,* 2 Idaho, 1105.

State v. *Schlier,* 3 Heisk, 281.

State v. *O'Hara,* 36 La. Ann. 94.

Osborn v. *State,* 33 Fla. 362; 25 L. R. A. 120.

A license fee imposed upon banks graduated upon the capitalization thereof is constitutional.

State v. *Trader's, etc.,* 42 La. Ann. 329.

In re Watson, 17 S. D. 486: The statute imposing a license upon peddlers, except those of nursery stock, agricultural products, including milk, butter, eggs, and cheese, was held not a violation of the constitutional provision requiring taxation to be equal and uniform.

In *Hays* v. *Commonwealth,* 107 Ky. 655, a statute requiring a license of peddlers of lightning rods, goods, wares and merchandise, clocks, watches, jewelry, gold and silver plated ware, drugs, etc., but exempting those selling tinware, agricultural implements, sewing machines, books, papers, meat stonewear, etc., was held unconstitutional.

In *Danville* v. *Weaver,* 17 Pa. Co. Ct. 17, it was held that an ordinance allowing the peddling of bread, fresh fish, oysters, and flowers, without a license, and exacting a license from peddlers of milk was not a discrimination between persons of the same class.

In *State* v. *Webber,* 214 Mo. 272, it was held that the legislature could exempt those peddling pianos, organs, books, charts, maps, eggs, butter and cheese from taking out a license, and by the same statute requiring those peddling other merchandise, as in the particular instance, extracts and liniments, to obtain a license.

In *People* v. *Smith,* 147 Mich. 391, an ordinance requiring peddlers to obtain licenses, was held not to be rendered invalid because it excepted persons selling fish, vegetables, meat, farm products, and bakeries delivering bread, from its operation.

After all, counsel's entire contention as to discrimination as indicated by the hill is that the ordinance in question discriminates against places as distinguished from persons.

In *City of Chicago* v. *Brownell,* 146 Ill. 64, the court at page 70, says:

> "If any one can lawfully engage in that business in those places at such times, for anything appearing in this ordinance defendant in error and all other persons so disposed can do the same. On the principle that a city council may discriminate between different localities within the city limits in granting license to sell intoxicating liquors, 'making no distinction between persons, but between places, only,' as was held in *City of East St. Louis* v. *Wehrung,* 46 Ill. 393, this ordinance would be valid in any view which can be taken of it."

In *Powell* v. *Pennsylvania,* 127 U. S. 678, the court at page 685, in speaking of judicial functions with reference to the review of legislative action where the exercise of discretion is involved, says:

> "It is not a part of their functions to conduct investigations of facts entering into questions of public policy merely, and to sustain or frustrate the legislative will, embodied in statutes, as they may happen to approve or disapprove its determination of such questions. The power which the legislature has to promote the general welfare is very great, and the discretion which that department of the government has, in the employment of means to that end, is very large. While both its power and its discretion must be so exercised as not to impair the fundamental rights of life, liberty, and property; and while according to the principles upon which our institutions rest, 'the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself'; yet, 'in many cases

of mere administration, the responsibility
purely political, no appeal lying except to t
ultimate tribunal of the public judgment, exe
cised either in the pressure of public opinio
or by means of suffrage.' *Yick Wo.* v. *Hopkin*
118 U. S. 370. The case before us belongs
the latter class. The legislature of Pennsy
vania, upon the fullest investigation, as we mu
conclusively presume, and upon reasonab
grounds, as must be assumed from the recor
has determined that the prohibition of the sal
or offering for sale, or having in possession
sell, for purposes of food, of any article man
factured out of oleaginous substances or co
pounds other than those produced from unadu
terated milk, to take the place of butter pr
duced from unadulterated milk or cream fro
unadulterated milk, will promote the publ
health, and prevent frauds in the sale of su
articles. If all that can be said of this legisl
tion is that it is unwise, or unnecessarily o
pressive to those manufacturing or sellin
wholesome oleomargarine, as an article of foo
their appeal must be to the legislature, or
the ballot box, not to the judiciary. The latt
cannot interfere without usurping powers co
mitted to another department of government.

Speaking of classification your Honors, in *Quo*
Wing v. *Kirkendall,* 223 U. S. 59, say a state do
not deny equal protection of the laws merely by a
justing its revenue laws and taxing system in su
a way as to favor certain industries or forms of i
dustry. Like the United States, although with mo
restriction and in less degree, a state may carry o
a policy, even a policy with which we might di
agree.

We believe that the foregoing cases and each of them sustain the validity of the ordinance in question.

CASES CITED BY COUNSEL FOR PLAINTIFF IN ERROR.

As to the Illinois authorities cited by counsel, they either apply in principle or they do not. If they do not apply, clearly it is unnecessary to take any note of them and in so far as they may be regarded as being in point, they must be regarded as having been overruled or distinguished by the Supreme Court in its decision of this case. In other words, the decision of the Supreme Court in this case excludes from consideration all of its prior expressions relative to the subject in question.

In *Southern Railway Company* v. *Greene*, 216 U. S. 400, cited by counsel, the legislation in question was held to be in violation of the Fourteenth Amendment, because while there was a classification in name it was not based upon distinction in fact. The court in that case said:

> "It is averred in the complaint, and must be taken as admitted, that there are other corporations of a domestic character in Alabama carrying on the railroad business in precisely the same way as the plaintiff."

The idea of the court, therefore, was that a classification for the purposes of taxation which was based solely upon a distinction between residents and non-residents was a violation of the Constitution.

It was interesting to note in this connection what your Honors had to say in *District of Columbia* v. *Brooke*, 214 U. S. 138.

In referring to the Fourteenth Amendment of the Federal Constitution, the court, at page 150, says:

> "Passing on that amendment, we have repeatedly decided—so often that a citation of the cases is unnecessary—that it does not take from the states the power of classification. And also that such classification need not be either logically appropriate or scientifically accurate. * * * A wide range of discretion, therefore, is necessary in legislation to make it practical, and we have often said that the courts cannot be made a refuge from ill-advised, unjust or oppressive laws. * * * In the light of these principles the contentions of defendant in error must be judged. The act in controversy makes a distinction in its provision between resident and non-resident lot owners, but this is a proper basis for classification. Regarded abstractly as human beings, regarded abstractly as lot owners, no legal difference may be observed between residents and non-residents, but regarded in their relation to their respective lots under regulating laws, the limitations upon jurisdiction, and the power to reach one and not the other, important differences immediately appear."

Another case where a classification based on the distinction between residents and non-residents was sustained is to be found in *Field* v. *Barber Asphalt Company*, 194 U. S. 618. In that case at page 621, the court says:

> "The exact point of objection is that the improvement is not to be made if a majority of the resident owners of the property liable to taxa-

> tion therefor shall file with the city clerk a protest against such improvement, which privilege of protest is not given to non-resident owners, thereby discriminating against them. It is well settled, however, that not every discrimination of this character violates constitutional rights. It is not the purpose of the Fourteenth Amendment, as has been frequently held, to prevent the states from classifying the subjects of legislation and making different regulations as to the property of different individuals differently situated. The provision of the Federal Constitution is satisfied if all persons similarly situated are treated alike in privileges conferred or liabilities imposed."

In *Cotting* v. *Kansas City Stock Yards Co.*, 183 U. S. 79, the court held that the act there in question was an attempt to affect the rights of a single corporation through the guise of making a classification and it was, therefore, in violation of the constitution and void, but the court also said in effect that it would not be proper to make a classification based upon the volume of business transacted (pp. 95 and 103) as counsel seemed to contend in their brief should have been done by the ordinance in the case at bar.

Inasmuch as it is not contended that the ordinance in question is aimed at any particular individual or a classification used solely as a means to cover the real object, we do not see how this case can be regarded as having any controlling effect.

Golf, etc. v. *Ellis*, 165 U. S. 150, cited by counsel, it seems to us has no application because the law there under consideration was neither a police nor revenue measure, whereas, the ordinance in question, as is

held by the Supreme Court of the State of Illlinois in this same case, is purely a revenue measure. And while the law there under consideration was undoubtedly arbitrary, we submit that the ordinance in question has as a basis for classifications which it creates, a rational difference in fact.

In *Raymond* v. *Chicago Traction Co.*, 207 U. S. 20, and in *Connelly* v. *Union Sewer Pipe Company*, 184 U. S. 540, cited by counsel in their brief, distinctions created by the laws in question had no relation in either instance to the purpose of the legislature.

We are not rash enough to set forth the contention that the ordinance in question complies with all the decisions of every state in the Union and we shall not attempt to discuss the various state cases cited by counsel. The Supreme Court of Illinois has held that the ordinance in question complies with the State and Federal Constitutions and we will be quite content if your Honors hold, as the state court did, that the ordinance complies with the Federal Constitution.

In so far as *Quong Wing* v. *Kirkendall*, 223 U. S. 59, and *Toyata* v. *Hawii*, 226 U. S. 184, cited by counsel, have any application to this controversy, we submit that they tend strongly to sustain our contentions.

THERE IS NO PROVISION IN THE FEDERAL CONSTITUTION WHICH FORBIDS UNEQUAL TAXATION BY THE STATES.

We simply call the attention of the court to the proposition above mentioned without taking any of the court's time in the consideration of discussion on our part relative thereto.

We believe the proposition applicable to the facts involved in this case and that it disposes of many of the contentions made by counsel.

The cases in support of the proposition are:

Davidson v. *New Orleans*, 96 U. S. 97, 106.
Bells Gap v. *Pennsylvania*, 134 U. S. 232.
Pacific, etc. v. *Seibert*, 142 U. S. 339, 351.
Merchants v. *Pennsylvania, etc.*, 167 U. S. 461.
Coulter v. *Louisville*, 196 U. S. 559.
Savannah v. *Savannah*, 198 U. S. 392.
Metropolitan v. *New York*, 199 U. S. 1.
St. Louis v. *Davis*, 132 Fed. 629.

We will at this point also suggest another matter which almost escaped our attention. The ordinance does not require the payment of an annual license fee, it may be paid for a semi-annual period, at one-half the annual rate.

In conclusion, we submit that the ordinance in question is not in conflict with the Federal Constitution and that the judgment of the state court should be affirmed.

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